



An
Bord
Pleanála

Inspector's Report ABP-315260-22

Development	Scaffolding storage and distribution yard. Natura Impact Statement (NIS) lodged with application.
Location	Junction of R132 and Old Turvey Avenue and including works to the T junction to the east of the site at the intersection of Old Turvey Avenue and New Turvey Avenue, Donabate, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0240
Applicant(s)	Scafftex Limited.
Type of Application	Planning Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Scafftex Limited.
Observer(s)	Turvey Residents Group Annette Golding

John Lalor
Geraldine Foley
Kieran Foley
Donal Lawless

Date of Site Inspection

9th of May 2024.

Inspector

Elaine Sullivan

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1.0 Site Location and Description

- 1.1. The appeal site is located at the junction of the R132 and Old Turvey Avenue, approximately 3km west of Donabate village. This linear site comprises a stated area of 0.82ha, with frontage of approx. 55m to the R132 and 210m to Old Turvey Avenue. The Turvey River bounds the site to the south, beyond which are industrial buildings within Turvey Business Park. The site falls generally toward the stream on its southern side and is at a lower level than adjoining roads. The site is generally overgrown. There are existing residential properties located on the opposite side of Turvey Avenue to the appeal site. Works are also proposed to realign the junction of Old Turvey Avenue and New Turvey Avenue which is located to the east of the subject site.

2.0 Proposed Development

- 2.1. The proposed development comprises the use of the site as a scaffolding storage and distribution yard, involving the surfacing of the western part of the site and installation of scaffolding storage racks.
- 2.2. Access to the site would be provided from Old Turvey Avenue and would be centrally positioned in the northern site boundary and to the east of the storage area. An on-site parking area for 6 cars and HGV turning area would be located to the west of the access. Two portacabin offices for administrative use are to be provided to the east of the access point. A new on-site wastewater treatment plant proposed on the eastern corner of the site.
- 2.3. Works proposed outside of the site include the realignment and widening of the existing junction of Old Turvey Avenue and New Turvey Avenue to the east of the site.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was refused by the Planning Authority (PA) for the following reason,

Having regard to the proximity of the site to the established residential properties opposite the site, the nature of the proposed use of the lands for a scaffolding storage and distribution yard, it is considered the proposed development would seriously injure the residential amenities of properties in the area by reason of noise and disturbance. The proposed development would, therefore, seriously injure the amenities, of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the Planning Authority (PA) was informed by two reports from the Planning Officer (PO). The first report dated the 5th of July 2022 recommended that a request for further information (FI) was issued to the applicant and the second report dated the 7th of November 2022 assessed the FI response and recommended a refusal of planning permission.

The report of the PO dated the 5th of July 2022 includes the following,

- Although the proposed use is not specifically listed under the GE – General Employment zoning objective for the site, it is comparable to a builder’s providers yard, which is listed as acceptable in principle.
- The PO notes that there is a proposal to rezone the lands under the 2023 Development Plan (now adopted) but was not considered to be material to the application.
- The subject site is within fluvial and coastal Flood Zones A, B and C and partly within flood zones B and C as per the Fingal Development Plan Strategic Flood Risk Assessment. The PA had no objection to the Flood Risk Assessment submitted for the development.
- Reference is made to the extensive planning history for the site which includes several refusals from the Board, including the most recent decision, ABP-306013-19, which was for a similar development. The PO believed the

reasons for refusal had been substantially addressed in the subject application.

- The PO considers that it would be possible to screen the storage racks and containers with landscaping. However there is a lack of information regarding the operations of the site, such as traffic movements, levels of activity, hours of operation, landscaping, and removal of vegetation etc. Some deficiencies in the NIS were identified and queried. Further information was requested regarding these issues.

The second report of the PO dated the 7th of November 2022 assessed the information submitted by the applicant and determined that the overall use was not compatible with the residential uses on the adjoining sites and would result in a negative impact on residential amenity through noise and disturbance. A recommendation to refuse permission was issued.

3.2.2. Other Technical Reports

- **Parks and Green Infrastructure Division** – The report dated the 10th of June 2022 recommended that an Arboricultural Survey including tree protection measures be submitted. The report of the 23rd of September 2022 found the response to FI acceptable.
- **Water Services Department** – No objection.
- **Transportation Planning** – The report of the PO states that the Transportation Planning Section required additional information. This report was not forwarded with the planning file and is not uploaded to the public website. The report of the 27th of September 2022 had no objection to the development.
- **Environmental Health Air & Noise Unit** – The report of the 14th of October 2022 considered the use incompatible with the surrounding residential area and would result in a serious noise disturbance.
- **Environment Climate and Active Travel Department** – No objection.

3.2.3. Prescribed Bodies

- **Inland Fisheries Ireland** – The report of the 30th of May 2022 notes that the Turvey river system is exceptional in supporting sea trout and brown trout populations. Salmonid water constraints apply to any works to be carried out. Precautions should be taken to ensure that no pollution enters the watercourse.
- **Uisce Eireann** – No objection.
- **Health and Safety Authority (HAS)** – No comment to make.

3.3. Third Party Observations

12 third-party submissions were received by the PA during the public consultation period. The following issues were raised,

- Impact on residential amenity of nearby properties.
- Potential for pollution to the river.
- Constraints and traffic restrictions on the local road network.
- Potential for traffic hazards from trucks.
- History of refusals for similar development on the site.
- Loss of trees and hedgerows.
- Negative impact on ecology (bats), and Natura 2000 sites.
- Impact of development on a flood plain.
- Lack of detail in the application.
- Unsuitable levels on the site for the development.

An additional 4 no. submissions were received following the submission of FI. The observations raised similar concerns to those raised in the initial consultation phase.

4.0 Planning History

ABP-306013-19, (PA Ref. F19A/0417) – Planning permission refused in 2020 for the use of a site for the storage of scaffolding and as a distribution yard which would

involve the partial surfacing of the site, the installation of scaffolding storage racks and the installation of two portacabin offices on the site. A new on-site wastewater treatment plant is proposed on the eastern part of the site. The development was refused for the following reason,

Having regard to the characteristics of the site including the high water table, the vulnerability of the wider site to flooding, and the capacity of the proposed wastewater treatment system to operate effectively, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the proposed development would not be prejudicial to public health, and would not cause pollution that would adversely affect the integrity of the Malahide Estuary Special Area of Conservation (Site Code:000205) and the Malahide Estuary Special Protection Area (Site Code:004025), or any other European site, in view of the sites' Conservation Objectives. Accordingly, the Board is precluded from granting permission in these circumstances.

ABP PL06F.240518, PA Ref. F11A/0127 - Permission refused in 2013 for the construction of two light industrial buildings, car parking, boundary wall and fencing, wastewater treatment plant and site developments for the following reasons:

1. Having regard to the planning history of the site and to the fact that a significant part of the site is identified as being prone to flooding under the Fingal East Meath Flood Risk Assessment and Management Study together with the lack of a detailed Flood Risk Assessment, the Board is not satisfied that the proposed development would be acceptable in relation to future flood risk or whether the measures proposed would have an adverse impact on the flood conditions elsewhere by reason of alterations to the existing natural floodplain along the water course. Furthermore, the Board considered that the measures proposed involving displacement onto a nearby site outside the ownership of the applicant could have an adverse impact on flood risk. It is considered that insufficient justification exists for the level of development proposed at this location having regard to its status in relation to flood risk.
2. Having regard to the location of the site adjacent to the Turvey River, the limited area available for percolation of treated effluent, the potential for risk of

flooding at this location and, in particular, the inherent uncertainty as to the precise nature and quantity of effluent to be produced by future occupants, the Board is not satisfied that the proposed development, on lands not served by a foul sewer, would not lead to an unacceptable risk of pollution of groundwater and surface water resources, and would not be prejudicial to public health. Furthermore, the proposed development would be premature pending the provision of public sewerage facilities under the Donabate West Scheme.

ABP - PL06F.234146, (PA Ref. F08A/1304) - Permission refused in 2010 for the erection of three light industrial buildings with ancillary office accommodation, car parking, fencing, entrance and site developments, for the following reasons:

1. Having regard to the nature and scale of development proposed, location adjacent to the Turvey River, the ground conditions on site, the limited area available for percolation of treated effluent and, in particular, the inherent uncertainty as to the precise nature and quantity of effluent to be produced by future occupants of the proposed light industrial units, the Board is not satisfied that the proposed development, on lands not served by foul sewer, would not lead to an unacceptable risk of pollution of groundwater and surface water resources, and be prejudicial to public health.
2. The site is located adjacent to a significant stream which is of considerable importance for fisheries and which discharges to Newbridge Demesne a pNHA, and to Malahide Estuary a SAC. It is an objective of the GDSDS and of the Fingal County Development Plan, 2005-2011 to establish, where feasible, riparian corridors, free from development, along all significant watercourses and to maintain these areas in a natural state to allow riverbank ecology to flourish. The proposed development contravenes this objective and would be likely to give rise to deterioration in surface water quality, which could impact on the ecology of the stream and a European site.

ABP - PL06F.226962, (PA Ref. F7A/0813) - Permission refused in 2008 for construction of three light industrial buildings, ancillary office accommodation, car parking, fencing, entrance and site development works for the following reason:

1. Having regard to the nature and scale of development proposed, the location of the site adjacent to the Turvey River, to the ground conditions on site, the limited area available for percolation of treated effluent and, in particular, the inherent uncertainty as to the precise nature and quantity of effluent to be produced by future occupants of the proposed light industrial units, the Board is not satisfied that the proposed development, on lands not served by foul sewer, would not lead to an unacceptable risk of pollution of groundwater and surface water resources, and be prejudicial to public health.

5.0 Policy Context

5.1. Fingal Development Plan 2023-2029

- 5.1.1. The site is located within the administrative boundary of Fingal County Council. The planning application was assessed under the Fingal County Development Plan 2017-2023, which was the operative Development Plan at the time. The current Development Plan is the Fingal County Development Plan 2023-2029 which came into effect on the 5th of April 2023.
- 5.1.2. On review of the contents of both plans I note that there are no material changes between the 2017 County Development Plan and the 2023 County Development Plan as they relate to the appeal site and the current proposal. Third parties refer to a proposal to rezone the site during the preparation of the 2023 Development Plan. However, this proposal was not accepted and the zoning from the 2017 Plan was carried through to the current Plan. The 2017 Plan also contained an objective to prepare a Masterplan for the subject site and the wider lands to the south, which was removed in the 2023 Plan.

Zoning -

- 5.1.3. The subject site is zoned objective '**GE – General Employment**', which seeks to *'Provide opportunities for general enterprise and employment'*.
- 5.1.4. The overall vision for the GE zoning objective is to, *'Facilitate opportunities for compatible industry and general employment uses, logistics and warehousing activity in a good quality physical environment. General Employment areas should be highly accessible, well designed, permeable and legible'*.

- 5.1.5. A 'Builders Provider / Yard' is listed as a use which is permitted in principle in the GE zoning objective.
- 5.1.6. Lands directly to the north of the site are zoned objective, '**RC - Rural Cluster**'. This zoning objective seeks to *'Provide for small scale infill development serving local needs which maintaining the rural nature of the cluster'*.

Section 13.2 – Transitional Zonal Areas -

Objective ZO2 - Have regard to development in adjoining zones, in particular, more environmentally sensitive zones, in assessing development proposals for lands in the vicinity of zoning boundaries.

Trees and Hedgerows & Ecology -

Objective DMSO134 - Site Summary of Specimen Removal, Retention and Planting - Regardless of development size or type, applicants must submit an overall site summary quantifying and detailing the following:

- tree and hedgerow removal,
- tree and hedgerow retention; and
- new tree and hedgerow planting.

This information will be submitted in a digital format agreed with the Council to allow amalgamation and reporting on tree and hedgerow cover within the County over time.

Objective DMSO138 – Protection and Enhancement of Biodiversity - Ensure all development and infrastructure proposals include measures to protect and enhance biodiversity leading to an overall net biodiversity gain.

Objective DMSO156 – Development Along Watercourses - Ensure that no development, including clearance and storage of materials, takes place within 10m as a minimum, measured from each bank of any river tributary or small stream or watercourse in the County (see Green Infrastructure Maps).

Objective DMSO210 – Riparian Corridors - Establish riparian corridors free from new development along all significant watercourses and streams in the County: "

- Ensure a minimum 10 m wide riparian buffer strip measured from the top of the bank either side of all watercourses. This minimum 10m wide riparian

buffer strip applies to lands within development boundaries – i.e. within designated settlement boundaries (as per Fingal County Council's Settlement Hierarchy set out in Chapter 2, Planning for Growth, Table 2.20: Fingal Settlement Hierarchy).

- A minimum 48m wide riparian buffer strip is required in all other areas outside of development boundaries.
- Where lands encompass urban and rural areas, a transitional approach from the urban riparian requirements to the rural riparian requirements may be appropriate and will be assessed on a case-by-case basis.
- Notwithstanding the above, cognisance must be taken of Flood Zone A and B, as outlined in the accompanying SFRA. See also Chapter 14, Development Management Standards (Section 14.20.5 Riparian Corridors) and the SFRA.

Wastewater Treatment -

Objective DMSO200 – EPA's Code of Practice for Domestic Wastewater Treatment Systems - Domestic effluent treatment plants and percolation areas serving rural houses or extensions shall comply with the requirements of the EPA's Code of Practice for Domestic Wastewater Treatment Systems (Population Equivalent <10), 2021, or as amended. The area required to install a Domestic Wastewater Treatment Plant and percolation area is subject to the separation distance requirements of the EPA CoP being achieved and adequate space for SuDS being provided.

Flood Risk -

Local Objective 23 relates to the subject site and the immediate lands adjoining the site and states that, *'Development on these lands, if any, will be restricted by the extent of flooding on the lands. Any development shall be subject to a commensurate FRA.'*

Objective DMSO212 – OPW Flood Risk Management Guidelines - Have regard to the OPW Flood Risk Management Guidelines 2009, as revised by Circular PL 2/2014, when assessing planning applications and in the preparation of statutory and non-statutory plans and to require site specific flood risk assessments be considered for all new developments within the County. All development must prepare a Stage 1

Flood Risk Analysis and if the flooding risk is not screened out, they must prepare a Site Specific Flood Risk Assessment (SSFRA) for the development, where appropriate.

5.2. Natural Heritage Designations

- 5.2.1. No designations apply to the subject site. The potential impact of the proposal on any Natura 2000 sites is fully assessed in Section 8.0 of this report.

5.3. EIA Screening

- 5.3.1. See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal include the following,

- The proposed development comprises two sites. Area A is the main body of the development and relates to the development of the lands at the junction of Turvey Avenue and the R132 as a scaffolding and distribution yard. Area B relates to proposed amendments to the existing T-junction at the intersection of the Old and New Turvey Avenue to the east of Area A.
- As the reason for refusal relates to Area A this is the primary focus of the grounds of appeal. However, the appeal notes that works to Area B are proposed in response to the previous Board decision for the site, ABP-306013-19. A note appended to the decision referenced the capacity of the junction to accommodate HGVs. The subject proposal includes a realignment of the junction to address the concerns.

- Works proposed to Area A are the same as those applied for under the previous application, ABP-306013-19.
- In response to concerns raised in ABP-306013-19, the trial hole test for the site characterisation form was carried out in January 2022, following a particularly wet month. The system was designed in accordance with the results and the Water Services Department had no objection. Therefore the appellant is satisfied that this reason for refusal under ABP-306013-19 has been overcome.
- In response to concerns raised about access and egress, sufficient sightlines can be achieved at the site entrance and are shown on the application drawings. The Transportation Department of the PA had no objection to the access arrangement.
- The appellant notes the comments in the PO's report regarding residential amenity. The request for FI made no comment on noise from the development but yet it formed the basis of the reason for refusal. If the issue of noise was of such importance, it should have been included in the FI request and the applicant should have had the opportunity to respond.
- A noise impact assessment has been prepared and submitted with the appeal to address the reason for refusal. It is noted that the assessment confirms that the proposed development does not meet the criteria established in the EPA Act 1992 to qualify as a noise nuisance. However, the applicant accepts the suggestion of the PO that a solid barrier to a height of 1.8m inside the hedge would be prudent in preventing noise from the site.
- Planning history for the site has raised issues regarding flooding, Appropriate Assessment and visual amenity. The appellant notes that these issues have been dealt with to the satisfaction of the Board in ABP – 306013-19 and the PA who had no objections to the proposal on these matters.

6.2. Planning Authority Response

- 6.2.1. A response was received from the PA on the 11th of January 2023 and includes the following,

- No additional comments to make but the PA wish to highlight the Environmental Health Section's comments regarding the activity contributing to noise in the residential area.
- The noise impact assessment submitted with the appeal is noted but the recordings are based on traffic noise levels and not from the movement of scaffolding poles and equipment in the morning and the ambient noise levels at that time.

6.3. Observations

6 no. submissions were received from,

- Donal Lawless
- Kieran Foley
- Geraldine Foley
- John Lalor
- Annette Golding
- Turvey Residents Group

The submissions refer to several similar issues which I have grouped together for clarity and brevity. The main issues raised include the following,

Traffic – Heavy Goods Vehicles –

- The development will increase the number of HGVs on the road.
- Additional traffic will impact on residential amenity.
- The current alignment of the junction was implemented to allow access for HGVs to the industrial park and relieve HGVs from Old Turvey Avenue. Auto-track information was not submitted to ensure safe access and egress for HGVs.
- There is a 3.5 tonne weight restriction on the Turvey Avenue to restrict HGVs. The proposal would bring HGVs onto the Avenue. The development will result in noise and the mitigation measures proposed are insufficient.

- Changes to the junction will facilitate an increase in HGV movements in the rural area, which is currently restricted.

Habitats and Ecology –

- The proposed realignment of the road will remove hedgerows and trees to facilitate HGVs.
- The development would result in the loss of habitats, hedgerows and trees.
- Evidence of foraging bats on the site was found during the bat survey. The development would result in disturbance to the protected species.

Flooding –

- The site is on a flood plain and will continue to flood. The proposed swale will not prevent flooding.
- Despite the results of the site suitability test, there is a concern that the waste treatment area proposed would result in the pollution of ground water and the nearby salmonid stream.

Residential Amenity –

- The noise impact survey is incomplete and flawed.
- The site currently acts as a buffer between the houses and the existing industrial estate.
- The proposed development would have a negative impact on residential amenity in terms of noise, disturbance, traffic, removal of trees and habitats, and the re-introduction of HGV's on Turvey Avenue.
- The development is not compatible with the rural zoning objective proposed for the site in the 2023 Fingal Development Plan (Draft at the time of the submission). The noise impact statement is flawed.
- The proposal is not in keeping with the transitional zone character of the site.

Procedural Issues -

- No comments have been made regarding the previous use of the site for scrapping vehicles.

- The letter of consent from FCC does not include a map showing the boundaries of the landholding.
- The public notices failed to include all the aspects of the development, including the stacking system, the 2.4m high fence and the berms at the edge of the river. The impact of the proposal on the lands zoned RC- Rural Cluster must be carefully considered, as well as the character and pattern of development in the area.
- A watermain crosses the site where the percolation area is proposed. The owner of the watermain does not give permission for the percolation area to be constructed above the watermain.

6.4. **Prescribed Bodies**

- **Development Applications Unit, (Department of Housing Local Government and Heritage)** – The hydrological connection from the subject site to the Malahide Estuary SPA is noted. A planning condition should be attached requiring all mitigation measures set out in the NIS to be implemented.

7.0 **Assessment**

7.1. Having examined the application details and all other documentation on file, including all the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Principle of Development
- Procedural Issues
- Impact on Residential Amenity – Noise & Visual
- Traffic
- Drainage – Flooding
- Wastewater

7.2. Principle of Development

- 7.2.1. The subject site is zoned objective GE – General Employment in the 2023 Development Plan. A ‘Builders Providers / Yard’ is listed as a land use which is permitted in principle within the GE objective and is defined as, ‘*A building and/or land used for the storage, sale or hire of builders materials*’. I am satisfied that the proposed use can be categorised as a Builders Providers / Yard and that it is acceptable in principle subject to the policies and objectives of the Development Plan. I note the RC zoning objective for the lands directly to the north of the site and the objectives contained in the Development Plan regarding transitional development on adjoining lands. This issue will be addressed in the following sections.

7.3. Procedural Issues

- 7.3.1. Third party submissions raised a number of procedural issues which included the previous uses of the site for scrapping vehicles, insufficient information regarding site boundaries on the letter of consent from the PA, insufficient description of the development in public notices and no permission is given for development of the polishing filter over a private watermain on the site.
- 7.3.2. There is no information on the file regarding previous uses on the site. Given the level of vegetation on the site it would appear to have been vacant for some time. In consideration of the lack of information regarding its previous use and the third-party submission, the Board may consider it appropriate to attach a condition relating to the adequate remediation of the site should planning permission be granted.
- 7.3.3. In terms of the alleged irregularities regarding the letter of consent and the description of development in the public notices, I note that both matters were considered acceptable by the planning authority. I am satisfied that this did not prevent the concerned party from making representations.
- 7.3.4. The issue raised regarding the proposed development crossing over a private watermain is a civil matter to be resolved between the parties, having regard to the provisions of Section 34(13) of the Planning and Development Act 2000 (as amended) and is not a matter for the Board to consider in the appeal.

7.4. Impact on Residential Amenity – Noise & Visual

Noise

- 7.4.1. The reason for the PA's refusal relates to the impact of the proposal on the residential amenity of properties in the vicinity by reason of noise and disturbance. In response to the PA, the grounds of appeal included a Noise Impact Assessment (NIA) for the development.
- 7.4.2. Third parties have submitted that the noise impact assessment is flawed as it omitted two residential properties from the assessment (as shown in Figure 1 of the report). Both properties are located to the east of the site; Hamilton Lodge is located to the southeast of the site can be accessed from Old Turvey Avenue and from the Turvey Business Park to the south and Lannis View is located to the northeast of the development on the northern side of Old Turvey Avenue. Third party submissions note that whilst this property is further away from the storage area of the development, it is closer to the junction and would be impacted by additional disturbance from HGV movements. It is also submitted that the use of data from a different site is not comparable and that the baseline noise monitoring was carried out outside of peak traffic hours.
- 7.4.3. I have reviewed the NIA and am satisfied that the assessment correctly identified the most sensitive noise receptors, which are the houses directly to the north of the site. These houses are the closest in proximity to the proposed storage area and to the vehicular access. Hamilton House would be approximately 64m from the proposed offices and parking area of the development. It is located along the northern boundary of Turvey Business Park and is bounded by commercial uses to the west and south. Access to the house from the south is via a shared road to a car sales showroom, a builder's providers and a garden machinery supplier. In consideration to its location and prevailing environment I do not consider it to be a noise sensitive receptor. Lanis View is approximately 280m from the parking area of the subject site and would be of sufficient distance from the storage yard to prevent noise from the activities on site. Information submitted on traffic movements to and from the site predict that 26-29 visitors to the site would be expected during a busy week, with an additional 3-4 deliveries per week. This could result in the site generating up to 16 trips per day, which would be a low level of additional traffic.

- 7.4.4. The NIA states that the baseline noise survey was carried out at 11.00am on a weekday. Third parties query the time selected for the survey as this is a quiet time for traffic. The timing of the survey is not expanded on in the NIA. However, as the traffic on the R132 would be lighter at this time, an assumption is made that the aim of the survey was to measure the ambient noise level at a quiet time which would give a better indication of the noise impact and present a worst-case scenario, which is standard practice.
- 7.4.5. The NIA states that operational information was gathered from a similar business in Clonshaugh. Information submitted by the applicant through FI states that the Clonshaugh site is similar in type and scale. Whilst the exact scale of the Clonshaugh site is unknown, the pattern and type of movements in the existing development is useful in determining what the noise generators would be and when the greatest noise impact would occur. The assessment identified that the vehicles most likely to use the facility would be cars, small vans, a drop side van, and a pick-up truck.
- 7.4.6. A noise prediction model was created for the proposed activities using forklift noise measurements taken from the Clonshaugh site and lorry noise measurements taken from technical guidance document *BS5228-1:2009+A1:2014 Code of Practice for Noise and Vibration Control on Construction and Open Sites*. Two scenarios were modelled, a forklift operating alone and a forklift operating during delivery (lorry). The results found that noise from the forklift operating alone would not occur above the prevailing background noise at the nearest noise sensitive dwellings. When the forklift was operating with a lorry an increase of 1dB would be expected above the prevailing background noise.
- 7.4.7. An assessment was also carried out to account for any 'transient impulsive sounds', and a weighting of 3dB was applied to the results of the noise prediction model. The results found that even with the weighting, an adverse impact would still not be suggested.
- 7.4.8. The NIA states that the weighting was applied in accordance with technical guidance document *BS1442:2014 Methods for Rating and Assessing Industrial and Commercial Sound*. I note that this reference document has been superseded by *BS1442:2014+A1:2019*. However, I have reviewed the Section 9 – Rating Level of

guidance document BS1442:2014+A1:2019, and I am satisfied that a weighting of 3dB is an appropriate level to measure the impulsive and intermittent noise that may occur from loading and unloading materials on the site.

- 7.4.9. The NIA has been carried out in accordance with technical advice guidance and found the noise levels from the proposed activities on the site would not significantly contribute to the existing ambient noise levels and that the proposal would not result in a significant negative impact in terms of noise disturbance. It is proposed to operate the site during the hours of 8.00am and 5pm Monday to Thursday and 8.00am to 1.30pm Friday and Saturday and not at all on Sundays and Bank Holidays. This would mitigate against any noise disturbance during the evenings and early mornings.
- 7.4.10. Mitigation measures proposed include the installation of a 1.8m noise barrier along the northern boundary of the site. Third parties have questioned the effectiveness of the barrier as the stacking racks would be 4m in height and the barrier would extend to just 1.8m. As most of the noise on the site would be from vehicular movements, the 1.8m high barrier would be effective in reducing noise from traffic movements inside the site.
- 7.4.11. Given the operational hours proposed for the site, the nature of the activity within the site, which is not an intensive noise generating activity, the level of movements to and from the site, the zoning for the site and the surrounding uses to the south, I am satisfied that the proposed development would not result in significant adverse impacts in terms of noise.

Visual Impact

- 7.4.12. I am satisfied that the proposal would not result in a negative visual impact on the residential amenity of the adjoining properties to the north of the site. A Landscaping Plan has been prepared for the development and shows the removal of approximately 8m of hedgerow to accommodate the new vehicular entrance from Turvey Avenue. The remainder of the hedgerow along the northern boundary will be retained with remedial works to be carried out to improve its condition. Additional tree planting along the northern and western site boundaries are also proposed. This would enhance the existing roadside landscape and would shield the storage areas from sight. Whilst the storage racks may still be visible above the existing planting,

they would have a low visual impact. A photomontage was submitted in response to a request for FI and shows that the greatest visual impact from the development would be from the R132 looking north-east across the site. These views would be intermittent and would be in keeping with the prevailing commercial uses to the south of the site in Turvey Business Park. The proposed use would be a low intensity use with minimal structures, without significant visual impacts or emissions. In this context it could be regarded as a suitable transitional use on the edge of this employment / industrially zoned area.

7.5. Traffic

- 7.5.1. Information submitted under further information states that the hours of operation of the site as from 8.00am to 5pm Monday to Thursday and 8.00am to 1.30pm on Fridays and Saturdays. The business would not operate on Sundays and Bank Holidays. The applicant assessed a site of similar type and scale in Clonsaugh and collated figures on traffic movements and activity on the site during a busy two-week period in July 2022. The business had 29 visitors for week 1 and 29 for week 2. These figures relate to customers only and it is anticipated that there will be on-site deliveries 3-4 times a week. These deliveries will be made by either a 22ft rigid truck or pick-up and small trailer. Additional vehicles using the site would include 3.5 tonne drop-side vans and 7 tonne trucks. The figures reference the vehicles rather than the trips generated. However, even if these figures are doubled to determine the trips to and from the site, the proposed use would generate low levels of traffic.
- 7.5.2. Traffic restrictions on Old Turvey Avenue include a 3.5 tonne restriction on traffic turning onto Old Turvey Avenue from the R132 and right-hand turns are prohibited onto the R132 from Old Turvey Avenue. The applicant confirmed that the 3.5 tonne restriction applies only to vehicles travelling in a southerly direction on the R132 and prevents vehicles from entering Old Turvey Avenue from this point. There is no restriction on vehicles turning left from Old Turvey Avenue on to the R132. Drawings submitted show that adequate sightlines can be achieved from the site access on Old Turvey Avenue. Traffic management measures for the site include the installation of signage at the site access to direct all traffic exiting the site to the new junction and away from the junction with the R132. Traffic would then exit onto a roundabout which would provide safe travel in both directions. Concerns were raised by third parties regarding the additional traffic on Old Turvey Road as a result of the

development. There would be additional traffic movements to and from the site to the east. However, given the number of trips predicted for the development, the level of additional traffic would be low.

- 7.5.3. In response to concerns raised by the Board in ABP- 306013-19 regarding the capacity of the existing junction to the east of the site, the applicant is proposing to realign and widen this junction. The realigned junction would facilitate safe movement of larger vehicles to and from the site and would accommodate the traffic management measures proposed to direct vehicles to and from the site via New Turvey Avenue. I am satisfied that the traffic management measures, and the works proposed to realign the junction would facilitate safe movement of traffic to and from the site. I note that the PA had no objection to the proposals for the existing road network and for traffic management to and from the site.

7.6. Drainage – Flooding

- 7.6.1. Planning history for the site includes grounds for refusal that relate to flood risk and the potential impact on public health from the on-site treatment of wastewater. A Site-Specific Flood Risk Assessment (SSFRA) was prepared for the subject development and the PA were satisfied that the previous concerns regarding flooding on the site had been adequately addressed.
- 7.6.2. Stage 1 of the SSFRA detailed the flood risk on the site and found that flood models for the Fingal East Meath Flood Risk Assessment and Management Study 2010 (FEM FRAMS) predicted that the 0.5% (1 in 200 chance in any given year) Annual Exceedance Probability (AEP) tidal flood event would encroach on the site. Therefore, the site is deemed to be partially located within Flood Zone A and Flood Zone B for coastal flooding. Regarding fluvial flooding, the Fingal Strategic Flood Risk Assessment 2023 (FSFRA) indicates that the site is partially within Flood Zone B, which has a 0.1% (1 in 1000 chance in any given year) AEP Flood Extent. The FEM FRAMS model indicates with high confidence that the predicted 1% AEP (1 in 100 year) fluvial flood event would encroach on the site and with low confidence that the 0.1% AEP fluvial flood event would encroach on the site. Therefore, the site is deemed to be partially located within Flood Zone A and B for fluvial flooding. The SSFRA found that the site is not likely to be at risk from pluvial flooding.

- 7.6.3. The proposed development is categorised as 'Less Vulnerable' development within the Planning System and Flood Risk Management Guidelines for Planning Authorities (Flood Risk Guidelines). Less Vulnerable development is considered appropriate for Flood Zones B and C but a Justification Test is required for Flood Zone A.

Coastal flood levels –

- 7.6.4. Predicted tidal flood levels on the site were modelled in the SSFRA using water levels from a node c. 240 m downstream from the site (Node 6Ta3920). The model predicted that the flood levels on the site from a 0.5% AEP tidal event would be 3.18m OD and from a 0.1% AEP tidal event would be 3.36m OD. The 3.5m OD contour line is located along the edge of the riparian strip which would be maintained along the Turvey River. This indicates that the peak tidal flood water level of 3.36m OD would be contained within the riparian strip.
- 7.6.5. The SSFRA was prepared in accordance with the requirements of the FSFRA for the 2017 Development Plan. To allow for climate change (CC) a modelling exercise was carried using the Mid-Range Future Scenario (MRFS) which was characterised by a 20% increase in rainfall, a minimum 350mm rise in sea level and 100% urbanisation. An increase of 350m was calculated using the current climate scenario flood water levels on the site. The results predicted flood water levels for the MRFS for a 0.5% AEP tidal flood event would be 3.68m OD and for a 0.1% AEP event it would be 3.81m OD.
- 7.6.6. I note to the Board that the FSFRA 2023 takes a similar approach to the 2017 FSFRA for calculating climate change to measure flood risk. Section 6.5.1 of the FSFRA 2023 states that climate change projections to be applied to 'Less Vulnerable' development should adopt the Mid-Range Future Scenario (MRFS). However, Table 6.3 of the FSFRA allows for a +500mm mean sea level rise in the MRFS instead of a 350mm sea level rise.
- 7.6.7. The SSFRA notes that the MRFS CC peak coastal flood events do not exceed the fluvial flood levels. Therefore the fluvial levels are the most important for design purposes.

Fluvial flood levels –

- 7.6.8. Fluvial flood levels were taken from Node 6Ta4247 which is located on the Turvey River and within the site boundary. The relevant flood levels from FEM FRAMS mapping show that the predicted flood levels on the site from a 1% AEP fluvial event would be 4.05m OD and from a 0.1% AEP fluvial event the level would be 4.63m OD. Both flood events would be expected to extend above the riparian strip which would follow the 3.5m contour.
- 7.6.9. The 2017 FSFRA required a freeboard level at a minimum of 500mm above the 1% AEP fluvial flood water level for the office structure. This would require a finished floor level (FFL) of 4.55m OD. It is proposed that the office structure would have a FFL of 5.28m OD.
- 7.6.10. Regarding the allowance for climate change, the SSFRA states that an increase in flood flows of the Turvey river by 20% does not equate to a 20% increase in flood depth. To allow for climate change, the applicant calculated the MRFS CC for the fluvial flood levels by determining the increase in the flow rate of the river Turvey and extrapolating this as a percentage increase in flood water levels. Table 6 of the SSFRA contains the flow levels of the river which were taken from a node upstream from the site, (Node 6Ta4247). Using this information, the SSFRA calculated that there is over 100% increase in flows between the 1% AEP and 0.1% AEP fluvial flood event, which would relate to an increase in flood water levels of 490mm.
- 7.6.11. Therefore, the SSFRA predicts that the 650mm freeboard provided between the FFL of the office, (5.28m) and the 0.1% AEP flood water level (4.63m) is appropriate, and that a further 20% increase in flood flows could not result in a further increase in flood water level of 650mm.
- 7.6.12. As the SSFRA was assessed against the FSFRA for the 2017 Development Plan, I reviewed the requirements of the 2023 FSFRA as they related to the proposed development and the subject site. The 2023 FSFRA requires that a MRFS for climate change be applied to 'Less Vulnerable' development. For fluvial flooding this would add an allowance of 20% on peak river flood flows. The Flood Risk Guidelines state that in the absence of climate change data, the 0.1% AEP flood can be applied as the 1% AEP + CC flood but this approach should only be used the effect is proportionate the scale and nature of the development.

7.6.13. The fluvial flooding model in the SSFRA made an allowance for the MRFS CC and found that the FFL for the office building would have sufficient freeboard to accommodate additional flood levels. The 2023 FSFRA requires that a freeboard level of the greater of,

- the 1% AEP (present day / Flood Zone A) flood level + 500mm freeboard, or
- the 1% AEP MRFS CC flood level +250mm freeboard,

should be applied to less vulnerable development. The SSFRA did not contain an exact figure for the 1% AEP MRFS CC flood level. Instead, it predicted an increase in flood levels of 490mm based on 100% increase in flow levels, which would give a flood level of 4.54m. The 1% AEP flood level + 500mm freeboard would be require a FFL of 4.55m. Based on the findings of the SSFRA both scenarios shown would result in sufficient freeboard to the FFL of 5.28m OD.

7.6.14. Part of the storage yard will be in Flood Zone A and B. The storage yard can be allowed to flood without risk of damage to materials stored on site. Ground levels on the western portion of the site will be lowered to allow for the offset of flood waters from stored scaffolding. Cut and fill works will be required to resurface the site. The SSFRA states that this will not exacerbate the flood risk outside of the site and will instead enhance the flood plain by lowering the site levels. Stormwater runoff will be attenuated in a swale and will outfall to the Turvey river at a controlled rate. The swale will also act as a control for contaminants prior to discharge to the river. I note that the SSFRA states that no used scaffolding materials will be returned to the storage facility for redistribution, thus reducing the potential for contamination of the waters.

7.6.15. As the development would be partially within Flood Zone A, a justification test in accordance with the Flood Risk Management Guidelines was carried out. It concluded that the development proposed for the site is suitable in respect of flood risk management. Recommended mitigation measures include,

- Lowering ground levels to the west of the site to provide additional flood storage on the site and to offset any flood volume that would be removed by the scaffolding materials on site.

- Locating the office on the edge of Flood Zone B and C and setting the FFL for the office at 5.28m OD which is above the peak 0.1% fluvial flood level with allowance for climate change.
- Retaining the existing levels in the riparian corridor.
- Offsetting flood waters from displacement through storage materials by lowering the levels of the site to the west.
- Locating the WWTS and percolation area in Flood Zone C.
- Sealing manholes to prevent water ingress.
- Using flood resilient measures such as permeable fencing in the storage yard.
- Storing potentially hazardous materials in Flood Zone C.

Conclusion

7.6.16. Levels on the site range from 2.48m OD at the lowest portion of the site in the southwest corner to 5.95m OD at the highest point in the northwest corner near the R132. There is also a gradual slope from west to east in the direction flow of the Turvey River. The office will be located on the boundary of Flood Zone B and C and would have a FFL of 5.28m OD which allows for the freeboard level required in the FSFRA 2017 and 2023 along with the required allowance for climate change in the MRFS. Both the office and the wastewater treatment system will be located outside of the 0.1% AEP fluvial flood extent level of 4.63m. I accept the findings of the SSFRA that the development would not increase the risk of flooding outside of the site and that mitigation measures are proposed to deal with the displacement of permeable surfaces within the site.

7.6.17. The SSFRA states that the mitigation measures and the location of the sensitive development ensures that the risk to the river Turvey is minimised as no flood waters are predicted to flood the wastewater treatment system and polishing filter. I note that the levels on the area proposed for the polishing filter are shown as ranging from 4.5m to 4.95m and the predicted fluvial flood level of the 0.1% AEP is 4.63. It is proposed to import soil for the soil polishing filter to achieve sufficient clearance between the invert level of the percolation pipe and the water table. However, given

the characteristics of the sloping site within a flood plain, I would have some concerns regarding the comparison between the findings of the SSFRA and the Site Characterisation Report and the interaction between both. This is examined in full below.

7.7. Wastewater Treatment

- 7.7.1. The subject application was accompanied by the same site characterisation report that was submitted under the previous appeal, ABP-306013-19. The site overlies a locally important aquifer of low vulnerability, and the groundwater protection response is R1. The area is served by mains water supplies. Site suitability tests were undertaken in July 2019. Trial holes were dug to 2.1m without encountering bedrock, however, the water table was encountered at 1.3m below ground level. T values of 48.33 were recorded and due to the highwater table, p-tests were undertaken recording a result of 28.78.
- 7.7.2. In the previous appeal for the site, the Planning Inspector noted that the trial holes were dug in July and that a winter trial hole should also have been dug given the propensity of the site to flood. They also raised concerns regarding the suitability of the site for a wastewater treatment system and ultimately this was the reason for refusal.
- 7.7.3. In response to the Boards decision, the site characterisation form included details from a trial hole which was dug in January 2022. The January trial hole was dug to a depth of 2.1m without encountering bedrock and the water table was encountered at 0.55m. The EPA Code of Practice (EPA CoP) – Domestic Wastewater Treatment Systems 2021 (Population Equivalent ≤ 10) states that if the bedrock and/or water table are at a level above 500mm below ground throughout the area of the site, it will usually be unacceptable to discharge to the ground.
- 7.7.4. Table 6.4 of the EPA CoP requires a minimum depth of 0.9m for unsaturated soil to accommodate a polishing filter. The results of the site characterisation tests show that this cannot be achieved throughout the year, and it is proposed to raise the level of the site by importing soils to achieve the invert level of the pipe to be set at 0.9m above the seasonal high-water table of 0.55m. The proposed polishing filter area would meet the required separation distances in Table 6.2 of the CoP for public

roads, neighbouring houses, watercourses and the drainage ditch to the north of the site.

7.7.5. Whilst the results of the site characterisation test would indicate suitable conditions for a percolation area, subject to soil importation, I am not satisfied that the conditions on the site can safely treat wastewater within the site. I visited the site in May 2024 but I was unable to enter the site as the access was blocked. However, the report of the Planning Inspector for ABP-306013-19 noted that in February 2020 the site was wet underfoot, and the trial holes had water in them.

7.7.6. Photographs submitted with the report show water in the January trial hole. Although the trench width for the trial hole is very narrow, mottling throughout the soil profile is evident, which indicates impeded drainage. Notwithstanding the proposal to create a raised percolation area through imported soil, the poor drainage in the underlying soils and the high-water table could result in leaching of wastewater to the watercourse on the site. In consideration of the sloping nature of the site, the high water table, the location of the site within a flood plain, the visual evidence of poor drainage characteristics of the soil and the location of a watercourse within the site, I am not satisfied that the applicant has sufficiently demonstrated that the proposed wastewater treatment system can be accommodated on the site and would not pose a risk to public health. For this reason, I recommend that planning permission is refused for the development.

8.0 AA Screening

8.1. In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information I conclude that the proposed development is likely to have a significant effect on the qualifying interests of Salicornia and other annuals colonising mud and sand [1310] and Mediterranean salt meadows (*Juncetalia maritimi*) [1410] of Malahide Estuary SAC [Site Code 000205], and the qualifying interest of the Wetland habitat [A999] in the Malahide Estuary SPA [Site Code 004025], 'alone' in respect of effects associated with the deterioration of water quality from the pollution of surface or groundwater from the development.

- 8.2. It is therefore determined that Appropriate Assessment (stage 2) under Section 177V of the Planning and Development Act 2000, is required on the basis of the effects of the project 'alone'.

Stage 2 – Appropriate Assessment

- 8.3. The following is an objective assessment of the implications of the proposal on the relevant Conservation Objectives (Co's) of Malahide Estuary SPA and Malahide Estuary SAC based on the scientific information provided by the applicant and taking into account expert opinion and submissions on nature conservation. It is based on an examination of all relevant documentation and submissions, analysis and evaluation of potential impacts, findings conclusions. A final determination will be made by the Board.
- 8.4. All aspects of the project which could result in significant effects are assessed and mitigation measures designed to avoid or reduce any adverse effects on site integrity are examined and evaluated for effectiveness. Possible in-combination effects were also considered. A full description of the proposed development and the potential impacts from the construction and operational phases are set out in Section 4.3 of the NIS.
- 8.5. Relevant European Sites:

In the absence of mitigation, the potential for significant effects could not be excluded for:

- Malahide Estuary SAC (SC 004025)
- Malahide Estuary SPA (SC 000205)

- 8.6. A description of the sites and their Conservation Objectives and Qualifying Interests/Special Conservation Interests, including relevant attributes and targets for these sites, are set out in Section 4.2 of the NIS. I have also reviewed the Conservation Objectives listed for each of the sites on the NPWS website (www.npws.ie). Table 8.1 below summarises the information considered for the Appropriate Assessment and the site integrity test. This information has been compiled from the information contained in the NIS, the supplementary information for the NIS as requested by the PA, and information from the NPWS.

Table 8.1 – AA summary matrix for Malahide Estuary SPA and SAC:

Malahide Estuary SAC (000215)			
		Summary of Appropriate Assessment	
Special Conservation Interest (SCI)	Conservation Objectives	Potential Adverse Effects	Mitigation Measures
Salicornia and other annuals colonising mud and sand [1310]	<p>To maintain the favourable conservation condition of the SCI –</p> <p>Maintain the favourable vegetation structure.</p> <p>Maintain the favourable vegetation composition – typical species and sub-species.</p>	<p>Deterioration of water quality from pollution of surface and/or ground water during the construction and operational phases.</p> <p>Pollution from concrete or oil/fuels could result in changes to benthic communities and vegetation.</p>	<p>Mitigation measures are listed in Section 5 of the NIS and in supplementary information submitted to the PA under further information on the 14th of September 2022.</p> <p>Detailed pollution control measures are outlined in Section 5 of the supplementary NIS (dated May 2022). The measures are designed to protect water quality during the construction and operational phases. They include standard measures such as good construction practice in accordance with relevant guidelines and site-specific measures such as the installation of silt fences, berms and an interceptor trench within the site and at least 10m from the river's edge, and the installation of an additional silt trap in the Turvey river</p>

			<p>downstream from the site.</p> <p>Post construction measures require the treatment of surface waters with sediment and oil interceptor traps prior to discharge.</p> <p>Mitigation measures to treat wastewater from the site during the operational stage relate to the onsite wastewater treatment system which includes a raised bed soil polishing filter.</p>
Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]	<p>To maintain the favourable conservation condition of the SCI</p> <p>Maintain the favourable vegetation structure.</p> <p>Maintain the favourable vegetation composition – typical species and sub-species.</p>	<p>Deterioration of water quality from pollution of surface and/or ground water during the construction and operational phases.</p> <p>Pollution from concrete or oil/fuels could result in changes to benthic communities and vegetation.</p>	<p>Mitigation measures are listed in Section 5 of the NIS and in supplementary information submitted to the PA under further information on the 14th of September 2022.</p>
<p>Overall Conclusion – Integrity Test</p> <p>The applicant determined that following the implementation of mitigation measures, the construction and operation of the proposed development alone or in combination with other plans and projects will not adversely affect the integrity of this European site.</p> <p>The NIS states that to make an overview of the cumulative impacts, ‘an examination was made of other planning applications granted in the Swords area for the past three years’. The NIS</p>			

concluded that proposed developments that have the potential to impact on the Malahide Estuary SAC/SPA will be subject to Appropriate Assessment and that the proposed development will not lead to any cumulative effects with other plans or projects that have been screened adequately for Appropriate Assessment.

I have reviewed the mitigation measures proposed for the subject development and I am satisfied that impacts from the development in terms of pollution from surface water runoff containing silt, sediment, hydrocarbons or other pollutants would be unlikely following the implementation of the mitigation measures proposed. However, as set out in Section 7.7 of this report, I do not agree with the findings of the NIS regarding the mitigation measures to treat wastewater. I have reviewed the wastewater treatment system proposed and I am not satisfied that, based on the characteristics of the site, that the wastewater can be safely treated on the site. The ground conditions indicate poor drainage which could result in leaching of wastewater into the watercourse on the site.

Based on the information provided in the application, I am not satisfied that adverse effects from the proposed treatment of wastewater on the site can be excluded for Malahide Estuary SAC. As this uncertainty remains, I cannot conclude that the integrity of Malahide Estuary SAC will not be adversely affected.

Malahide Estuary SPA (004025)

Special Conservation Interest (SCI)	Conservation Objectives	Potential Adverse Effects	Mitigation Measures
Wetlands [A999]	<p>To maintain the favourable conservation condition of SCI habitats.</p> <p>To maintain the permanent area of the wetland habitat which should be stable.</p>	<p>Pollution from concrete and oil/fuels could result in changes to benthic communities and vegetation.</p> <p>Pollution from untreated wastewater could result in changes to benthic communities and vegetation.</p>	<p>Mitigation measures are listed in Section 5 of the NIS and in supplementary information submitted to the PA under further information on the 14th of September 2022.</p> <p>Mitigation measures to prevent pollution from untreated wastewater include the proposed wastewater treatment system.</p>
Overall Conclusion – Integrity Test			

The applicant determined that following the implementation of mitigation measures the construction and operation of this proposed development alone or in combination with other plans and projects will not adversely affect the integrity of this European site.

However, as set out in Section 7.7 of this report, I do not agree with the findings of the NIS regarding the mitigation measures to treat wastewater. I have reviewed the wastewater treatment system proposed and I am not satisfied that, based on the characteristics of the site, that the wastewater can be safely treated on the site. The ground conditions indicate poor drainage which could result in leaching of wastewater into the watercourse on the site.

Based on the information provided in the application, I am not satisfied that adverse effects from the proposed treatment of wastewater on the site can be excluded for Malahide Estuary SPA. As this uncertainty remains, I cannot conclude that the integrity of Malahide Estuary SPA will not be adversely affected in view of the CO's for the site.

Appropriate Assessment Conclusion

- 8.7. In screening the need for Appropriate Assessment, it was determined that the proposal for a scaffolding storage and distribution yard with associated wastewater treatment plant had the potential to result in significant effects on Malahide Estuary SAC and Malahide Estuary SPA and that Appropriate Assessment was required in view of the conservation objectives of those sites.
- 8.8. Following a detailed examination and evaluation of the NIS, all associated material submitted with the planning appeal as relevant to the Appropriate Assessment process, and taking into account submissions of third parties, I am satisfied that the design of the proposed development, combined with the proposed mitigation measures to address impacts from surface water runoff pollution during the construction and operational phase would prevent adverse effects on the integrity of Malahide Estuary SAC and Malahide Estuary SPA. However, I am not satisfied that the mitigation measures to treat wastewater on the site are sufficient to address the potential for wastewater to enter the watercourse and to adversely affect the integrity of Malahide Estuary SAC (SC 004025), Malahide Estuary SPA (SC 000205) or any other European site in view of the site's Conservation Objectives. This conclusion is based on,
- A full assessment of the wastewater treatment system proposed and the characteristics of the site.

- Detailed assessment of all aspects of the proposed development that could result in significant effects or adverse effects on European Sites within a zone of influence of the development site.
- Consideration of the conservation objectives and conservation status of qualifying interest species and habitats.
- A full assessment of risks to special conservation interest bird species and qualifying interest habitats and species.
- Application of mitigation measures designed to avoid adverse effects on site integrity and likely effectiveness of same.
- Consideration and assessment of in-combination effects with other plans and projects.

9.0 Recommendation

I recommend that planning permission is refused for the development.

10.0 Reasons and Considerations

Having regard to the characteristics of the site including the high water table, the vulnerability of the wider site to flooding, and the capacity of the proposed wastewater treatment system to operate effectively, the Board is not satisfied, on the basis of the submissions made in connection with the planning application and the appeal, that the proposed development would not be prejudicial to public health, and would not cause pollution that would adversely affect the water quality in the Turvey river, and the integrity of the Malahide Estuary Special Area of Conservation (Site Code:000205) and the Malahide Estuary Special Protection Area (Site Code:004025), or any other European site, in view of the sites' Conservation Objectives. Accordingly, the Board is precluded from granting permission in these circumstances.

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.

Elaine Sullivan
Senior Planning Inspector

22nd May 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-315260-22			
Proposed Development Summary	Scaffolding storage and distribution yard with onsite WWTS and works to realign a junction on Old Turvey Avenue.			
Development Address	Junction of R132 and Old Turvey Avenue and including works to the T junction to the east of the site at the intersection of Old Turvey Avenue and New Turvey Avenue, Donabate, Co. Dublin			
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X	
		No	No further action required	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?				
Yes			EIA Mandatory EIAR required	
No	X		Proceed to Q.3	
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?				
		Threshold	Comment (if relevant)	Conclusion
No	X	N/A		No EIAR or Preliminary Examination required
Yes				Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____

Appendix 2 – AA Screening Determination

Screening for Appropriate Assessment Screening Determination

Step 1: Description of the project

Planning permission is sought for a scaffolding storage and distribution yard comprising 2 no. office containers, 6 no. car parking spaces, new vehicular entrance and all associated site works. A wastewater treatment system comprising soil polishing filter is also proposed for the site. It is also proposed to realign and widen the existing T-junction to the east of the site.

I have considered the development proposed for the scaffolding and distribution yard in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

The subject site is in the townland of Turvey in north County Dublin. It is on the corner of the R132 and Old Turvey Avenue, approximately 2.8km to the north-west of Donabate. The surrounding land uses are mixed with Turvey Business Park directly adjoining the site to the south with a row of residential house to the north of the site. Lands to the north-west of the site, and on the opposite side of the road are generally open fields.

The closest European Sites to the development sites are,

- Rogerstown Estuary SAC (000208) – approximately 350m to the south of the site.
- Rogerstown Estuary SPA – (004015) - approximately 880m to the south-west of the site.
- Malahide Estuary SPA (004025) and SAC (000205) – approximately 3.2km to the south-east of the site, and
- North-West Irish Sea SPA (004236) – approximately 5.5km to the east of the site.

The development site comprises two parts, the main site is located on the corner of the R132 and Turvey Avenue and would contain the scaffolding storage and distribution yard. The second part is the junction on the public road to the west of the site which would be realigned and widened as part of the development proposal. The main site is bounded by Turvey Avenue local road to the north, by the R132 regional road to the west and by the Turvey Business Park to the south. A fragmented hedgerow forms the site boundary to the north with a more open railing along the western boundary with the R132. The Turvey River runs along the southern site boundary. The site slopes from north to south, and from west to east. The site is currently covered with vegetation. It is located on a flood plain.

The proposed development comprises clearing the existing vegetation from the site, reprofiling parts of the site through cut and fill and the importation of soil to provide a wastewater treatment system. This would involve installing c. 3,112m² of semi-permeable hardcore and c. 643m² of impermeable hard surface area. (different figures in the NIS – my figs taken from the Drainage docs). A new vehicular entrance would be provided from Turvey Avenue and three rows of racks for scaffolding of up to 4m in height would be installed in the north-western corner of the site. Additional works would involve the widening and realignment of the existing junction to the west of the site.

The site located in the Nanny-Delvin Hydrometric Area and Catchment, the Ballyough Stream Sub Catchment and the Turvey Sub-Basin. The Turvey Stream flows in an easterly direction along the southern boundary of the site and flows/outfalls to the Malahide Estuary. Habitats within the site were identified as mainly grassland habitats with pocket of scrub and immature willow trees. The riparian corridor along the Turvey stream comprises grassy verges and/or trees. The northern boundary of site comprises hedgerow and a fragmented treeline.

Step 2: Potential impact mechanisms from the project

The proposed development will not result in any direct effects on any European Site.

The applicant has applied the source-pathway-receptor model in determining possible impacts and effects of the scaffolding storage yard development. Potential indirect impacts from the project would be,

- Deterioration of water quality arising from pollution of surface water runoff during site preparation and construction through the release of silt / hydrocarbons / oil into the Turvey Stream.
- Deterioration of water quality arising from pollution of surface water runoff during the operational phase through vehicular movements and moving scaffolding materials.
- Deterioration of water quality arising from untreated wastewater.

Where an ecological / hydrological pathway exists, indirect impacts could negatively affect qualifying interests, species and habitats, that rely on high water quality.

Step 3: European Sites at risk

Using the source – pathway – receptor model, the Rogerstown Estuary SAC and SPA and the North-West Irish Sea SPA are excluded from further examination as no pathways exist between the subject site and these designated sites.

An indirect pathway exists from the subject site to the Malahide Estuary SPA and SAC via the Turvey Stream which flows through the site and discharges to Malahide Estuary.

Table 1 European Sites at risk from impacts of the proposed project

Effect mechanism	Impact pathway/Zone of influence	European Site(s)	Qualifying interest features at risk
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<p>Deterioration of water quality through contaminated surface water runoff from silt, hydrocarbons and/or oil during the construction and operational stage.</p> <p>Deterioration of water quality through the discharge of untreated wastewater during the operational stage.</p>	Turvey Stream	Malahide Estuary SAC	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p>
	Turvey Stream	Malahide Estuary SPA	<p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Goldeneye (<i>Bucephala clangula</i>) [A067]</p> <p>Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p>

			Redshank (<i>Tringa totanus</i>) [A162] Wetland and Waterbirds [A999]
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Malahide Estuary encompasses the estuary, saltmarsh habitats and shallow subtidal areas at the mouth of the estuary. A railway viaduct, built in the 1800s, crosses the site and has led to the inner estuary becoming lagoonal in character and only partly tidal. Much of the outer part of the estuary is well-sheltered from the sea by a large sand spit, known as “The Island” which is now a golf course. The outer part empties almost completely at low tide and there are extensive intertidal sand and mud flats exposed.

The Malahide Estuary SPA is of high importance for winterfowl and supports a good diversity of species. The E.U. Birds Directive pays particular attention to wetlands and, as these form part of this SPA, the site and its associated waterbirds are of special conservation interest for Wetland & Waterbirds. Malahide Estuary SPA is a fine example of an estuarine system, providing both feeding and roosting areas for a range of wintering waterfowl. The lagoonal nature of the inner estuary is of particular value as it increases the diversity of birds which occur. The site is of high conservation importance, with internationally important populations of Light-bellied Brent Goose and Black-tailed Godwit, and nationally important populations of a further 12 species. (NPWS – Site Synopsis).

The Malahide Estuary SAC is a fine example of an estuarine system with all the main habitats represented. The dune spit has a well-developed outer dune ridge dominated by Marram Grass and the dry areas of the stabilised dunes have a dense covering of Red Fescue grass and native wildflowers. Well-developed salt marshes occur at the top of the spit with Atlantic Sea Marsh being the dominant type. In the outer estuary a small area of Mediterranean salt meadow occurs. Apart from the most extreme inner part, the inner estuary does not drain during low tide. Here patches of saltmarsh and salt meadow occur. The site includes a fine area of rocky shore south-east of Malahide and extending towards Portmarnock.

The Turvey river flows into the Malahide Estuary at a point in the most northerly section of the outer estuary and underneath the railway line.

Step 4: Likely significant effects on the European site(s) 'alone'.

Table 2: Could the project undermine the conservation objectives 'alone'

Malahide Estuary SAC	To maintain or restore the favourable conservation condition of the Qualifying Interests	Could the conservation objectives be undermined (Y/N)?			
		Deterioration of water quality through pollution			
Mudflats and sandflats not covered by seawater at low tide [1140]	Maintain	N			
Salicornia and other annuals colonising mud and sand [1310]	Maintain	Y*			
Atlantic salt meadows (Glauco-Puccinellietalia maritima) [1330]	Restore	N			
Mediterranean salt meadows (Juncetalia maritimi) [1410]	Maintain	Y*			
Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120]	Restore	N			
Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]	Restore	N			
Malahide Estuary SPA					
Great Crested Grebe (Podiceps cristatus) [A005]	Maintain	N			
Light-bellied Brent Goose (Branta bernicla hrota) [A046]	Maintain	N			
Shelduck (Tadorna tadorna) [A048]	Maintain	N			
Pintail (Anas acuta) [A054]	Maintain	N			
Goldeneye (Bucephala clangula) [A067]	Maintain	N			
Red-breasted Merganser (Mergus serrator) [A069]	Maintain	N			

Oystercatcher (Haematopus ostralegus) [A130]	Maintain	N			
Golden Plover (Pluvialis apricaria) [A140]	Maintain	N			
Grey Plover (Pluvialis squatarola) [A141]	Maintain	N			
Knot (Calidris canutus) [A143]	Maintain	N			
Dunlin (Calidris alpina) [A149]	Maintain	N			
Black-tailed Godwit (Limosa limosa) [A156]	Maintain	N			
Bar-tailed Godwit (Limosa lapponica) [A157]	Maintain	N			
Redshank (Tringa totanus) [A162]	Maintain	N			
Wetland and Waterbirds [A999]	Maintain	Y**			

Malahide Estuary SAC

*The NIS submitted with the application notes that the Natura 2000 Standard Data Form, NPWS (2017) does not include water quality as a threat to the SAC. The NIS also states that water quality is not a target for the maintenance of the QIs of Salicornia and other annuals colonising mud and sand, and Mediterranean salt meadows (Juncetalia maritimi). However the information for the individual habitat types on the EU website ([Habitat \(europa.eu\)](http://Habitat.europa.eu)) lists 'mixed source pollution to surface and ground waters' as a 'highly important' pressure for Salicornia and other annuals colonising mud and sand [1310], and the 'discharge of urban waste water generating pollution to surface or ground water' as a pressure for Mediterranean salt meadows [1410].

Under the Water Framework Directive the water quality status of the Turvey river is categorised as 'Poor'. There are small patches of both habitats at the northern tip of the outer estuary where the Turvey river flows into the estuary. On the application of the precautionary principle I consider the proposed development has the potential to undermine the conservation objectives of the habitats.

Malahide Estuary SPA

******The NIS does not consider the development to be a threat to the conservation objectives for the species listed in the SPA as it would not lead to the decrease in the population trend of any bird species, would not lead to any decrease in the range, timing or intensity of use of any areas within the SPA by the QI species and would not lead to the loss of any wetland habitat area. I accept that that the development will not have a direct impact on the conservation objectives for the species by virtue of the targets listed for the site. However, there may be an indirect impact on the wetlands habitat which is listed as a QI by virtue of the overall ecological environment through the potential for waterborne pollution. On application of the precautionary principle, I consider the proposed development has the potential to undermine the conservation objectives of the wetlands habitat which is listed as a QI for the Malahide Estuary SPA.

I conclude that the proposed development would have a likely significant effect 'alone' on -

- Salicornia and other annuals colonising mud and sand [1310] and
- Mediterranean salt meadows (*Juncetalia maritimi*) [1410] of the Malahide Estuary SAC and,
- Wetland and Waterbirds [A999] of the Malahide Estuary SPA,

from effects associated with the deterioration of water quality from the pollution of surface and/or groundwater runoff and untreated wastewater. An appropriate assessment is required on the basis of the effects of the project 'alone'. Further assessment in-combination with other plans and projects is not required at this time.