



An  
Bord  
Pleanála

# Inspector's Report

## ABP-315896-23

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<b>Development</b>	Construction of dwelling
<b>Location</b>	Site to the north of Weston Park on Dublin Road, Oldtown, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F22A/0657
<b>Applicant(s)</b>	Cobia Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Cobia Limited
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	04/06/23
<b>Inspector</b>	Adrian Ormsby

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## 1.0 Site Location and Description

- 1.1. The application site has a stated site area of 0.057 ha and is located within the settlement boundary of Oldtown. Oldtown is a rural village in North County Dublin located along the R122 Regional Road connecting Finglas to the Naul Village.
- 1.2. The site is located on the east side of the R122 and can be described as an infill site between a two storey terrace of existing residential properties that form part of the Weston Park development to the south and an existing single storey detached house to the north. There is a pattern of detached single and two storey houses in Oldtown.
- 1.3. The site is located on a relatively straight stretch of road where a speed limit of 50 k/ph applies and a broken white line is evident in front of the site. There is a public footpath opposite the site and an incomplete footpath on the application side in front of Weston Park.
- 1.4. The application proposes a vehicular entrance directly onto the R122 Regional Road. There is an existing agricultural gate into the site but the ground levels at the road and into the site suggests this is not utilised easily or frequently. The site is overgrown and visually detracts from the village. There is a mature boundary of trees to the south of the site. Mature trees and landscaping adjoin the northern boundary but these appear to be located outside of the application site and form part of the property of the neighbouring detached house.

## 2.0 Proposed Development

- 2.1. The application comprises off permission for the construction of-
  - a 3 bed, 2 storey, detached dwelling (127.3 sq.m, 8.1m high) with single storey rear return and a rear garden of 286.5 sq.m
  - new vehicular entrance
  - 2 car parking spaces
  - Public water supply and wastewater treatment
  - and all associated site works

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse permission on the 26/01/23, for four reasons as follows-

- 1. The Oldtown Waste Water Treatment Plant (WWTP) is restricted in terms of its capacity to accept additional discharge. The proposed development would be premature having regard to the capacity of existing sewerage facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 2. The Oldtown Waste Water Treatment Plant (WWTP) is restricted in terms of its capacity to accept additional discharge. On the basis of the information submitted and the operational status of the Waste Water Treatment Plant, the Planning Authority is not satisfied that the proposed development would not adversely affect the integrity of the Rogerstown Estuary Special Area of Conservation (SAC) and Special Protection Area (SPA).  
  
The proposed development would also materially contravene policy objective NH15 of the Fingal Development Plan 2017-2023 which seeks to 'Strictly protect areas designated or proposed to be designated as Natura 2000 sites (i.e. Special Areas of Conservation (SACS) and Special Protection Areas (SPAs); also known as European sites)'. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 3. Having regard to the layout of the proposed development, specifically the relationship of the proposed two storey dwelling to the adjoining property to the north, it is considered that the proposed development would adversely affect the residential amenity of the adjoining property by way of overlooking, and overbearance and has the potential to give rise to adverse impacts on the amenity of adjoining property arising from overshadowing. The proposed*

*development would contravene materially Objective PM44 of the Fingal Development Plan 2017- 2023. Accordingly, the proposed development would be contrary to the proper planning and sustainable development of the area.*

4. *The proposed development, by reason of its height and massing, would be out of character with the established residential units to the north adjacent and would be injurious to the visual amenities of the area. The proposed development would materially contravene Objective DMS39 of the Fingal Development Plan 2017-2023. which states 'New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area' and would also materially contravene Objective PM44 of the Fingal Development Plan 2017-2023 which states to 'Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected'. The proposed development would, therefore be contrary to the proper planning and sustainable development of the area.*

## **4.0 Planning Authority Reports**

### **4.1. Planning Reports**

The Chief Executives' Order / Planning Report (26/01/23) generally reflects the decision of the Planning Authority. The following is noted from the report-

- The site is with Zone D which is an aircraft noise zone. The applicant has not demonstrated that a good acoustic design has been followed and this should be addressed.<sup>1</sup>
- Reports of the Transportation and Parks Section required further information.
- Reference is made to a receipt of a CE Order from the Airport Noise Control Authority (ANCA) in relation to section 34 of the Planning Acts. I have not been able to identify this on the file by have viewed it on Fingal's online

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<sup>1</sup> Appendix 10 of the CDP is a List of Townlands to which Assessment Zone D Applies. Oldtown is identified.

planning application portal. I am satisfied it has no material bearing on this application.

#### 4.2. Other Technical Reports

- Water Services-
  - 13/12/22- Foul drainage: Recommend refusal The Oldtown WWTP is restricted in terms of its capacity to accept additional discharge. Fingal County Council is prioritising the completion of the two incomplete housing estates within the Oldtown conglomerate (Weston Park and Oldtown Avenue) and it is therefore recommended that this development be refused, prior to Irish Water progressing a solution to the WWTP capacity issue.
  - Surface Water, no objection subject to condition.
- Parks and Green Infrastructure-
  - 12/12/22- Further information required in relation to-
    - A tree survey for the site
    - Details of replacement planting
- Transportation-
  - 12/01/13- Further Information required in relation to-
    - extending red line boundary to include for area of works to public road and footpath where works may take place, details of boundary treatment, shared surface and reducing entrance width to 4m.
    - swept path analysis for car turning movements.
    - Details of gates to entrance

#### 4.3. Prescribed Bodies

- Irish Water<sup>2</sup>-
  - 25/11/22- No objections subject to typical connection agreement conditions
- IAA-
  - 16/12/22- No observations
- DAA-
  - 06/12/22- No comment to make other than to recommend consultation with the IAA-ANSP.

#### 4.4. Third Party Observations

- None

#### 5.0 Planning History

- This Site-
  - None recent
- Within Oldtown c. 150m north of the site-
  - The Board's attention is drawn to F21A/0249 which is currently on appeal to ABP under ref. no. ABP- 313922-22. This application for 10 houses (as part of an unfinished housing estate) was refused by Fingal on the 01/06/22 for two reasons similar to refusal reason 1 and 2 of the subject appeal. In the Planning Authority's Response to the Appeal<sup>3</sup> under 313922 it is stated-
    - *.....the issue of capacity of the Waste Water Treatment Plant at Oldtown, Irish Water are responsible for this asset and in*

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<sup>2</sup> Irish Water are now known as Uisce Éireann. As the application was made when the utility was known as Irish Water and the appeal refers to same, I shall also refer to Irish Water (IW) for ease of reference purposes.

<sup>3</sup> Available to view on Fingal's online planning portal <https://planning.agileapplications.ie/fingal/application-details/89676>



*submissions to the planning authority they stated that due to capacity issues they would not support the application as proposed. This was reflected in the reasons for refusal.*

*Subsequent to making a decision on the planning application on 18th July, 2022, Irish Water informed Fingal County Council that as part of the implementation of their Small Towns and Villages Growth Programme (STVGP) that a project to provide additional wastewater treatment capacity in Oldtown will be delivered. The purpose of the STVGP is to provide funding for water and wastewater treatment plant growth capacity in smaller settlements which would not otherwise be provided for in the 2020-2024 Capital Investment Plan. To date, Irish Water have announced the funding of a project in Fingal County to provide additional wastewater treatment capacity at The Naul (Priority No. 1), as part of the STVGP. Further to this, a project to provide additional wastewater treatment capacity in Oldtown (Priority No.4) will be delivered via the National Certificate of Authorisation Programme. The selected project will continue through the standard capital investment delivery processes and will be required to meet governance and budgetary requirements at each phase. If Irish Water confirms the same to An Bord Pleanála, this would address the substantive issues that warrant the reason for refusal by the Planning Authority.*

## **6.0 Policy Context**

### **6.1. Fingal County Development Plan 2023-2029**

- 6.1.1. The Planning Authority assessed this application under the provisions of the Fingal County Development Plan 2017-2023 (CDP).
- 6.1.2. The Fingal Development Plan 2023 – 2029 was made on 22nd February 2023 and came into effect on 5th April 2023.
- 6.1.3. The site is zoned 'RV Rural Village' with an objective 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’*

The Vision is to-

*‘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.’*

Residential uses are ‘Permitted in Principle’ within this zoning type.

6.1.4. Zoning Map Sheet 3 shows the site is located within the broken blue line around Oldtown to which the Legend indicates is a ‘*Masterplan Area*’- MP 3.A. Table 2.18 of the CDP lists 8 new Masterplans to be prepared during the plan period. Oldtown is one of these.

6.1.5. Chapter 2 sets out the Council’s Core Strategy. Table 2.20 of the Development Plan details Fingal’s Settlement Hierarchy and identifies Oldtown as a ‘Town and Villages’ within the ‘Core’ area<sup>4</sup>. The following Policy and Objectives are considered relevant-

- 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*

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<sup>4</sup> Section 3.5.15.1 of the CDP deals with Rural Villages and details that in accordance with Fingal’s Settlement Hierarchy, ‘rural villages’ are located within either the Metropolitan or Core areas, relative to their position to Dublin City and Suburbs and Metropolitan area. Oldtown is located in the Core area.

- Objective CSO67 – LAPs, Masterplans and Framework Plans for Towns and Villages

*As set out in Tables 2.15, 2.16, 2.17, 2.18 and 2.19:*

- *Implement existing Local Area Plans and Masterplans within the Towns and Villages.*
- *Prepare and implement Local Area Plans for identified areas.*
- *Prepare and implement Masterplans for identified areas.*
- *Prepare and implement Frameworks for identified areas*

- 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.*

- Objective CSO69 – Scale of New Housing Developments in Towns and Villages

*Ensure that the scale of new housing developments within Towns and Villages both individually and cumulatively, shall generally be in proportion to the pattern and grain of existing development*

- Objective CSO72 – Compact, Organic and Sequential Development of Towns and Villages

*The scale of new residential schemes within Towns and Villages shall be in proportion to the pattern and grain of existing development with a focus on delivering compact growth and providing for the organic and sequential development of the settlement. Infill and brownfield development shall have regard to the existing town or village character and create or strengthen a sense of identity and distinctiveness for the settlement.*

6.1.6. Chapter 3 deals with 'Sustainable Placemaking and Quality Homes'. The following Objective is relevant-

- Objective SPQHO42 – Development of Underutilised Infill, Corner and Backland Sites and states-

*Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.*

6.1.7. Chapter 9 deals with 'Green Infrastructure and Natural Heritage'. The following Policies are relevant-

- Policy GINHP17 – Protection of European and National Sites and states-  
*Strictly protect areas designated or proposed to be designated as Natura 2000 sites (i.e. Special Areas of Conservation (SACs) and Special Protection Areas (SPAs); also known as European sites) including any areas that may be proposed for designation or designated during the lifetime of this Plan.*
- Policy GINHP21 – Protection of Trees and Hedgerows  
*Protect existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character and ensure that proper provision is made for their protection and management in line with the adopted Forest of Fingal-A Tree Strategy for Fingal.*

6.1.8. Chapter 11 deals with 'Infrastructure and Utilities'. Table 11.1 details Uisce Éireann's Statement of Capacity (February 2023). In relation to Wastewater capacity issues are identified in Oldtown. The following is stated-

*Oldtown WWTW – it is planned to upgrade the plant under the National Certificate of Authorisation Programme.*

6.1.9. Chapter 14 sets out Development Management Standards. Table 14.4 deals with Infill Development and states-

*Infill Development presents unique opportunities to provide bespoke architectural solutions to gap sites and plays a key role in achieving sustainable consolidation and enhancing public realms.*

*Proposals for infill development will be required at a minimum to:*

- *Provide a high-quality design response to the context of the infill site, taking cognisance of architectural form, site coverage, building heights, building line, grain, and plot width.*

- *Examine and address within the overall design response issues in relation to over-bearance, overlooking and overshadowing.*
- *Respect and compliment the character of the surrounding area having due regard to the prevailing scale, mass, and architectural form of buildings in the immediate vicinity of the site.*
- *Provide a positive contribution to the streetscape including active frontage, ensuring that the impacts of ancillary services such as waste management, parking and services are minimised.*
- *Promote active street frontages having regard to the design and relationship between the public realm and shopfronts of adjacent properties.*

6.1.10. Section 14.6 is titled 'Design Criteria for Residential Development in Fingal'.

'Residential Standards' are set out in section 14.6.4. The following objectives are relevant-

- Objective DMSO19 – New Residential Development

*Require that applications for residential developments comply with all design and floor area requirements set out in:*

- *Quality Housing for Sustainable Communities – Best Practice Guidelines 2007,*
- *Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009, the companion Urban Design Manual – A Best Practice Guide, DEHLG 2009, .....*

- Objective DMSO27 – Minimum Private Open Space Provision

*Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows:*

- *3 bedroom houses or less to have a minimum of 60 sq. m. of private open space located behind the front building line of the house.*
- *.....*
- *Houses Narrow strips of open space to the side of houses shall not be included in the private open space calculations.*

6.1.11. Section 14.10.1 deals with 'Corner/Infill Development' and states-

*The development of infill housing on underutilised infill and corner sites in established residential areas will be encouraged where proposals for development are cognisant of the prevailing pattern of development, the character of the area and where all development standards are observed. While recognising that a balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill, such development provides for the efficient use of valuable serviced land and promotes consolidation and compact growth.*

- Objective DMSO31- Infill Development

*New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.*

6.1.12. Section 14.7.7 deals with Car Parking and details 2 car parking spaces for three-bedroom houses in Zone 2 i.e. all other areas not in zone 1.

6.1.13. Objective DMSO105 – Development within Airport Noise Zones. This section states-

*Strictly control inappropriate development and require noise insulation where appropriate in accordance with Table 14.16 above within Noise Zone B and Noise Zone C and where necessary in Assessment Zone D, and actively resist new provision for residential development and other noise sensitive uses within Noise Zone A, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone*

In relation to Airport Zone D- Table 14.16 states-

*'.....All noise sensitive development within this zone is likely to be acceptable from a noise perspective. An associated application would not normally be refused on noise grounds, however where the development is residential-led and comprises non-residential noise sensitive uses, or*

*comprises 50 residential units or more, it may be necessary for the applicant to demonstrate that a good acoustic design has been followed. Applicants are advised to seek expert advice.*

## **6.2. Ministerial and Other Guidance**

- Sustainable Residential Development in Urban Areas (2009)- Section 6 'Smaller Towns and Villages':
- Quality Housing for Sustainable Communities: Best Practice Guidelines for Delivering Homes Sustaining Communities (2007)
- BRE209 - Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'.

## **6.3. Natural Heritage Designations**

- The site is-
  - c. 8.8km west of the Rogerstown Estuary SAC 000208
  - c. 8.8km west of the Rogerstown Estuary SPA 004015

## **6.4. EIA Screening**

- 6.4.1. It is proposed to construct one house on a stated site area of 0.057 ha in an existing settlement boundary. The scale of the development and site area are well below the applicable thresholds of Class (10) (a) Infrastructure Projects of Schedule 5 Part 2 of the Planning and Development Regulations 2001 (as amended) i.e. number of units.
- 6.4.2. In terms of Class 10 (b) I am not entirely convinced the proposal can be described as an 'urban development'. However the site is located within a settlement boundary, is not located within a 'business district' and is not within the 'built up area' as defined by the Regulations (i.e. where "city" and "town" have the meanings assigned to them by the Local Government Act, 2001). In this regard the site has a stated area of 0.057ha and is well below the applicable threshold of 20 ha for urban development sites identifiable as 'elsewhere'.

- 6.4.3. The introduction of one house will not have an adverse environmental impact on surrounding land uses. The proposal would not give rise to waste, pollution or nuisances that differ from that arising from other housing in the neighbourhood. It proposes use of the public water and drainage services of Uisce Eireann/Irish Water upon which its effects would be marginal in terms of EIA.
- 6.4.4. I have concluded that, by reason of the limited nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development is not necessary (See Preliminary Examination EIAR Screening Form).

## **7.0 The Appeal**

### **7.1. Grounds of Appeal**

The grounds of this first party appeal can be summarised as follows-

- The Applicants have received a confirmation of feasibility for both wastewater and water connection from Irish Water.
- IW have submitted their consultation report to Fingal indicating no objection to the proposal subject to applying for a connection from IW.
- It is the responsibility of IW to ensure that Oldtown Wastewater Treatment Plant does not adversely affect the integrity of SAC's and SPA's.
- There are no windows facing northwards towards adjacent property. The first-floor windows with most overlooking potential are from the stairs and bathroom. A condition ensuring these are obscured glazing would be acceptable.
- The placement of the dwelling halfway between the northern and southern properties would allow for a gradual curtailment of the front façade building. The rear building line was not pushed deeper to provide for adequate private open space.
- The proposed development would provide minimal overshadowing. Shadow analysis drawings are submitted. They show little of no impact to private



amenity spaces of the northern property on March 21<sup>st</sup>. No windows of existing property face within 90 degrees of due. APSH analysis of the proposed development was not therefore deemed necessary.

- The proposed height and massing were determined relative to the immediate context to the south comprising of two storey houses. The proposal is congruous with the type and style of houses within 50 m of the site. Photos supplied. A contextual contiguous elevation is also supplied. A proposal for a hipped roof is shown to demonstrate the massing could be curtailed.
- The proposal will result in the development of an under-utilised inefficient brownfield site in a manner which will positively support the local community and harmonise the existing streetscape of Oldtown.

## **7.2. Planning Authority Response**

The Planning Authority's response to the grounds of appeal can be summarised as follows-

- There are no further comments to make in relation to the proposal.
- In the event that this appeal is successful, provision should be made in the determination for applying a financial contribution in accordance with the Councils Section 48 Development Contribution Scheme.

## **7.3. Observations**

- None

## **8.0 Assessment**

### **8.1. Introduction**

8.1.1. I have examined the application details and all other documentation on file. I have inspected the site and have had regard to relevant local/regional/national policies and guidance. I consider that the substantive issues for this appeal are as follows-

- Principle of Development

- Refusal Reason 1
- Refusal Reason 2 and Appropriate Assessment
- Refusal Reason 3
- Refusal Reason 4
- Other Matters

## 8.2. Principle of Development

8.2.1. The site is zoned 'RV Rural Village' with an objective 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'*. The CDP details that residential uses are Permitted in Principle on 'RV' Zoned lands.

8.2.2. The application proposes one house between established residential properties on RV zoned lands. Subject to further assessment below and having regard to the above zoning objective, the proposed development of one house at this location is considered acceptable in principle.

## 8.3. Refusal Reason 1

8.3.1. The Planning Authority have recommended refusal on the basis that the existing Oldtown Waste Water Treatment Plant (WWTP) is restricted in terms of its capacity to accept additional discharge. The main premise of this refusal reason appears to come from the report of the Council's Water Services Department which details the capacity issue in Oldtown yet highlights the Council's priority to complete two housing estates within the village (Weston Park and Oldtown Avenue). They recommend refusal prior to Irish Water (IW) progressing a solution to the WWTP capacity issue. The departmental report also refers to the Irish Water Report on the file and notes it states no objection subject to conditions.

8.3.2. The Appellants argue that in preparing for the planning application they consulted with Irish Water by way of a Pre-connection feasibility enquiry and received from them a confirmation of feasibility for both water and wastewater connections. A copy of this documentation dated 22/06/2022 was submitted with the application and is on

file. In terms of Wastewater it clearly states- *“Feasible without infrastructure upgrade by Irish Water”*

- 8.3.3. The Appellants highlight that IW are responsible for the provision of wastewater services and had no objection to the application. IW simply requested a condition be applied to a planning permission requiring an application for a connection to be made to IW.
- 8.3.4. The capacity issues around wastewater are longstanding in Oldtown as highlighted in the Oldtown Local Area Plan 2012 which informed the previous Development Plan operative at the time of the Council’s decision. However the report of the Water Services Departments details that incomplete housing estates are being prioritised. This appears to suggest Fingal see some capacity to facility additional connections to the WWTP based on their priority basis.
- 8.3.5. Irish Water has been responsible for the operation of public water and wastewater services including management of infrastructural assets and maintenance of the system since 2014. In advance of making this application the Applicant’s correctly sought a confirmation of feasibility for a wastewater connection from IW. The received a response saying the connection was feasible without infrastructure upgrade.
- 8.3.6. As a ‘Prescribed Body’ IW submitted their ‘statutory response’ to Fingal on this planning application in which they detail ‘no objection’ to the development subject to a condition requiring the applicants to sign a connection agreement prior to the commencement of development. It is noted the person who signed the response appears to be the same person who signed the Confirmation of Feasibility.
- 8.3.7. I have reviewed IW’s Wastewater Treatment Capacity Register for Fingal<sup>5</sup> which at the time of writing is dated June 2022. This indicates the Oldtown WWTP is at capacity but a WWTP Project is ‘Planned or Underway’. I also note the contents of Table 11.1 of the CDP which supports the plan to upgrade the Oldtown WWTP.
- 8.3.8. I also refer the Board to the contents of Fingal’s Response to an Appeal under ABP-313922-22 (see section 5.0 Planning History above). This appeal is not yet

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<sup>5</sup> <https://www.water.ie/connections/developer-services/capacity-registers/wastewater-treatment-capacity-register/Fingal/>

determined but is generally for 10 houses within 150m of the subject site. This response suggests that despite IW previously not supporting that development, IW have since informed Fingal County Council that as part of the implementation of their Small Towns and Villages Growth Programme (STVGP) that a project to provide additional wastewater treatment capacity in Oldtown will be delivered. The response also suggests that if IW confirms the same to An Bord Pleanála, this will address the substantive reason for refusing that application i.e. WWTP capacity. While this response has no material bearing on the subject appeal, it highlights some uncertainty in the approach been taken to wastewater in Oldtown. The Board may wish to consider seeking a submission or observation on this matter from Irish Water under the provisions of section 131 of the Act.

- 8.3.9. Having considered all of the above, I am of the opinion that the Applicant has a reasonable expectation to have pre-empted wastewater capacity concerns at the Oldtown WWTP by virtue of receiving IW's 'Confirmation of Feasibility' prior to lodging this application i.e. responsibility in this regard lies with the national utility. It is evident that plans are in place to upgrade the Oldtown WWTP, however the 'Confirmation of Feasibility' details this application can be accommodated without infrastructure upgrade works.
- 8.3.10. Therefore, and based on the information before me, I am of the view that the Council's first refusal reason should be set aside. A standard planning condition requiring an Irish Water connection should be attached to any decision to grant permission. The IW connection agreement would in any event still require a separate application process that could be refused by IW.

#### 8.4. Refusal Reason 2 and Appropriate Assessment

- 8.4.1. The Planning Authority's second refusal reason relates primarily to the operational status of the existing WWTP and accordingly the Planning Authority was not satisfied that the proposal would not adversely affect the integrity of the Rogerstown Estuary Special Area of Conservation (SAC) and Special Protection Area (SPA). As a result they considered the proposal would materially contravene policy objective NH15 of the Fingal Development Plan 2017-2023 which seeks to '*Strictly protect designated as Natura 2000 sites*'. Policy GINHP17 is the equivalent policy in the current CDP.

- 8.4.2. The Applicants again contend that IW are responsible in this regard and they have made no objection to permitting the wastewater connection.
- 8.4.3. The Oldtown Wastewater Treatment Plant receives wastewater from the village environs and discharges treated effluent to the Ballyboghil River. This forms an indirect pathway for potential water quality issues to impact indirectly on the downstream Natura 2000 sites (i.e. Rogerstown Estuary SAC and SPA).
- 8.4.4. However, IW are responsible for the Oldtown WWTP infrastructure. The effectiveness of existing wastewater infrastructure to treat wastewater from the site is a matter for IW under their EPA licencing arrangements. It is considered that connection to the public system is subject to further IW consent as discussed in section 8.3 and would only be given where compliance with EPA licensing in respect of the operation of the plant would not be breached.
- 8.4.5. Having regard to the above and-
- the nature and scale of the site and the development proposed, its location within the development boundary of the village and its siting on residentially zoned land
  - the likely insignificant increase in the loading at the Oldtown Wastewater Treatment Plant from one, three bedroom, five person house
  - the separation distances of the site to the nearest European sites (Rogerstown Estuary SAC and SPA) both located approximately 9km to the east as the bird flies)
  - the absence of any evident direct pathway between the appeal site and these European sites,
  - the hydrological distance of indirect pathways to European Sites e.g. via the public wastewater network, surface water drainage<sup>6</sup>, tributary streams and the Ballyboghil River where any likely pollutant in surface or foul waters would be sufficiently treated, diluted and or dispersed upon reaching outfall,

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<sup>6</sup> A soakaway is proposed in the rear garden. Typical SUD's should also form part of conditions of any grant of permission.

no Appropriate Assessment issues are considered to arise, and the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European site.

- 8.4.6. The proposed development is not considered to materially contravene Policy GINHP17 of the Fingal CDP 2023-29 and the Council's second reason for refusal should therefore be set aside.

### 8.5. Refusal Reason 3

- 8.5.1. The Planning Authority's third refusal reason primarily relates to the relationship of the proposed development to the neighbouring single storey property to the north and the negative impacts it would have on existing residential amenity by way of overlooking, overbearance and overshadowing. They consider the proposal materially contravened Objective PM44 of the previous CDP. Objective SPQHO42 is the equivalent objective in the current CDP.
- 8.5.2. PM44 sought to *'encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.'*
- 8.5.3. The Appellants seek to address this concern and submit diagrams with the appeal showing the internal layout of the proposed house does not lead to undue overlooking or overshadowing. They justify the location of the proposed house in terms of providing a gradual curtailment of the building line.
- 8.5.4. The application site is c. 15m wide at the roadside boundary and narrows further as it extends eastwards before widening to c. 9m along the rear boundary. The site is c. 60m deep from the road edge. The nature of the site dimensions and its location between two existing residential properties with significant differences in front building line distances from the public road can make sites such as this difficult to develop.

#### Overbearance

- 8.5.5. The CE Planning report considers the proposal would be overbearing, obtrusive and detrimental to the amenities of the existing property to the north.

- 8.5.6. The applicant seeks to locate the house to provide a stepped back 'curtailment' of the building line while also providing a reasonable set back of the house from the site boundaries. In this regard the dwelling will be located c. 4.67m forward of the front building line of the dwelling to the north.
- 8.5.7. The siting of the proposed house could be considered to have an overbearing impact when viewed from within the property north of the application site. However I do not consider it so obtrusive in the context of the sites zoning and location within the settlement boundary to warrant refusing the proposal. I am satisfied the visual impact of same is appropriately mitigated by the presence of existing and mature landscaping within the boundary of the northern property and the stepped building line is a reasonable attempt to enforce and develop the streetscape of the village at this location.
- 8.5.8. The Board are referred to page 9 of the Appeal document where an alternative roof profile is detailed. It is considered this half pitch roof would reduce the impact of overbearance on the property to the north and the Board may wish to consider a condition amending the design in this regard. However it is not considered necessary.

#### Overlooking

- 8.5.9. The CE Planning report suggests concerns of overlooking from the rear first floor windows over the front, side and rear gardens of the property to the north.
- 8.5.10. The proposed house does not provide any windows to its southern gable elevation. Ground floor windows to the northern gable are set back c. 1.4m from the boundary. One bathroom window is provided to the first floor of the northern elevation. The siting of the house ensures the northern elevation faces toward the front garden of the property to the north which is not considered private amenity space.
- 8.5.11. Rear facing windows on the east facing rear elevation are to a stairwell, bathroom and a bedroom located on the southern side of this elevation. The application site is located within a settlement boundary and degrees of oblique overlooking of private amenity spaces are often inevitable in such locations.
- 8.5.12. In this context, I do not consider oblique overlooking from a stairwell to the side of the house to the north to be so significant to warrant refusing the dwelling. The

Board may wish to consider obscuring the glazing of this window by condition as suggested by the Applicant but I do not consider it warranted. I am satisfied the rear amenity space of the property to the north will not be unduly overlooked due to the separation distances.

#### Overshadowing

- 8.5.13. The third refusal reason also highlights the potential of the development to have adverse impacts on the amenity of adjoining property by way of overshadowing.
- 8.5.14. In their appeal the Applicants submit shadow analysis drawings showing the impact of overshadowing on the Spring Equinox at 12.00 and 16.00 hours. The Applicants refer to the standards set out in section 3.3 of Site Layout Planning for Daylight and Sunlight, A guide to good practice (Building Research Establishment Report, 2022) i.e. BRE209.
- 8.5.15. The submitted drawings show the shadows cast will be predominantly to the front garden of the northern property. I note section 3.3.3 of BRE details the availability of sunlight should be checked for all open spaces where it will be required. It details this would normally include gardens, such as the main back garden of a house. The proposal will not have a significant impact on sunlight to the main private amenity space of the existing house to the north of the application site.

#### Loss of Interior Sunlight

- 8.5.16. The Appeal also refers to loss of sunlight to the interior of rooms of the northern property. In accordance with BRE209 it details that no main living room window of the property to the north faces within 90 degrees of due south. Having considered section 3.2.2 of BRE209 I note the front windows of the property to the north appear to face slightly north eastwards and therefore do not face within 90 degrees of due south. In this regard it is unlikely the proposed development would reduce direct sunlight into the interior of the property to the north.

#### Daylight

- 8.5.17. Neither the Planning Authority nor the Applicant refer to the potential for a loss of diffuse daylight to the neighbouring property to the north. Section 2.2 of BRE209 titled 'Existing Buildings' details it is important to safeguard daylight to nearby buildings. The guidelines are clear in that they relate to rooms in dwellings where



daylight is required including living rooms, kitchens and bedrooms. I do not know what the rooms are in the property to the north but it is reasonable to consider the nearest window on the south side of the front elevation on a precautionary basis.

8.5.18. I note the presence of existing mature trees inside the boundary of the property to the north. These appear to be evergreen trees. Appendix G of BRE deals with 'Trees and Hedges'. Section G1.2 refers to diffuse daylight and states-

*“Where the effect of a new building on existing buildings nearby is being analysed, it is usual to ignore the effect of existing trees. This is because daylight is at its scarcest and most valuable in winter when most trees will not be in leaf.”*

8.5.19. Section 2.2.16 and 2.2.17 of BRE209 deals with domestic extensions which adjoin the front or rear of a house and provides a 'quick method' to assess diffuse daylight impacts on the houses next door. Having considered the proximity of the proposed house to the existing house to the north I am satisfied it is an appropriate method for this appeal.

8.5.20. Figure 17 and 18 of BRE209 illustrates the application of 'the 45° approach' to determine if such impacts are likely to be significant. Using the drawings submitted with the Application and in the Appeal document (page 9), I have applied the methodology from figure 18 to the proposed development and find -

- The centre of the window of the property to the north lies inside the 45° angle from the roof of the proposed house on site plan but just outside on the elevation submitted with the application.
- All of the window is located outside of the 45° angle on the elevation submitted with the appeal (page 9).
- As per BRE209 a significant amount of daylight is not likely to be blocked by the proposed development.

8.5.21. Having considered the above and noting the mature landscaping boundary between the properties it is not likely that the proposed development will have a negative impact on the residential amenity of neighbouring properties in terms of loss of daylight.

### Conclusion

- 8.5.22. The Planning Authority have considered the proposed development would materially contravene Objective PM44 of the previous plan in terms of negative impacts on existing residential amenity in the area. Objective SPQHO42 is considered the equivalent objective in the current CDP.
- 8.5.23. Having considered all of the above, I am satisfied the location of the proposed dwelling and its design strikes a reasonable balance in terms of protecting the residential amenity of existing properties in the area and providing appropriate infill development of an underutilised yet residentially zoned site within the settlement boundary. The proposal would not materially contravene Objective SPQHO42 and the third refusal reason should be set aside.
- 8.5.24. The Board are however advised that they may wish to consider amending the roof profile through a condition i.e. half pitched as per that shown on Page 9 of the Appeal document in order to maximise the benefit of diffuse daylight to existing windows in the property to the north and to reduce the extent of overbearance. However, this amendment is not considered necessary.

### **8.6. Refusal Reason 4**

- 8.6.1. The Planning Authority's fourth refusal reason considers the height and massing of the proposed development would be out of character with the established residential units to the north, would be injurious to the visual amenities of the area and would materially contravene Objectives DMS39 and PM44 of the Fingal Development Plan 2017-2023. Objectives SPQHO42 and DMSO31 are considered the equivalent objectives in the current CDP.
- 8.6.2. The Applicant details the height and massing of the proposal was determined relative to the immediate context to the south which comprise solely of two storey houses.
- 8.6.3. The proposed development is for a two-storey house c. 7.9m wide and c 8.1m high finished with brick at ground level, render at first floor and a natural slate roof. The house will have a slightly protruding gable to the north side of the front elevation.

8.6.4. Having inspected the site I am satisfied the proposed design is consistent with existing two storey houses in Oldtown and would not be out of character with existing development in the area. The proposal would not materially contravene Objectives SPQHO42 and DMSO31 of the current CDP and the Planning Authority's fourth refusal reason should therefore be set aside.

#### 8.7. Other Matters-

- It is considered that many of the matters raised by the Transportation Planning Section are ones that should generally be dealt with through the Road Opening License process. The requirement for swept path analysis for cars is not considered necessary given the site's location within the settlement boundary, on a section of road subject to a 50kph speed limit, the broken white line to the front of the site and where sightlines are achievable. However it is noted the 'proposed footpath' as shown on Drg No.: PI 100 may not be able to connect to the existing path and cycle path to the front of No. 1 Weston Park as the land between the site and 1 Weston Park do not appear to be within the control of the applicant. This should not preclude granting the proposal however pedestrian provision in this regard should be addressed through a condition seeking to facilitate full connectivity should the short stretch of land become available.
- It is considered the matters raised by the Parks and Green Infrastructure Division of the Planning Authority can be addressed by condition.
- I note the reference in the CE Planning Report to the site's location within Zone D around the airport and that the applicant has not demonstrated that a good acoustic design has been followed and should be addressed. Having considered the provisions of Objective DMSO105 and Table 14.16 of the CDP I am satisfied acoustic design provisions in this regard are not necessary for this development type.

## 9.0 Recommendation

9.1. I recommend that permission is granted subject to the following conditions-

## 10.0 Reasons and Considerations

10.1. Having regard to the provisions of the Fingal County Development Plan 2023-2029, the pattern of development in the area, the infill nature of the application site and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area, would not be prejudicial to public health and would not result in a traffic hazard and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and by the further plans and particulars received by An Bord Pleanála on the 22<sup>nd</sup> day of February 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. Details of the materials, colours and textures of all the external finishes to the proposed houses shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of visual amenity.

3. The site entrance, access driveway and roadside boundary treatment serving the proposed development including the provision of a footpath, cycle lane dishing and kerbs within the side boundary shall comply with the detailed requirements of the planning authority for such works. Proposals shall be

submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interest of amenity and of traffic and pedestrian safety.

4. (a) An accurate tree survey of the site including an Arboricultural Impact Assessment, which shall be carried out by an arborist, shall be submitted to and agreed with the planning authority prior to commencement of development. The survey shall show the location of each tree on the site, together with the species, height, girth, crown spread and condition of each tree, distinguishing between those which it is proposed to be felled and those which it is proposed to be retained.

(b) Measures for the protection of those trees which it is proposed to be retained, replacement planting using native species and boundary treatment proposals shall be submitted to and agreed in writing with the planning authority prior to commencement of development.

Reason: To facilitate the identification and subsequent protection of trees to be retained on the site, in the interest of visual amenity.

5. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

6. Prior to commencement of development, the developer shall enter into water and wastewater connection agreement(s) with Uisce Éireann.

Reason: In the interest of public health.

7. Water supply and drainage arrangements, including the disposal of surface water which shall also provide for appropriate Sustainable Urban Drainage Systems (SuDS), shall comply with the requirements of the planning authority for such works.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

8. Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the Planning Authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

9. Construction and demolition waste shall be managed in accordance with a construction waste and demolition management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in accordance with the "Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and Demolition Projects", published by the Department of the Environment, Heritage and Local Government in July 2006.

Reason: In the interest of sustainable waste management.

10. Prior to commencement of development, the applicant or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended, unless an exemption certificate shall have been applied for and been granted under section 97 of the Act, as amended. Where such an agreement is not reached within eight weeks from the date of this order, the matter in dispute (other than a matter to which section 96(7) applies) may be

referred by the planning authority or any other prospective party to the agreement to An Bord Pleanála for determination.

Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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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Adrian Ormsby  
Planning Inspector

05<sup>th</sup> of June 2023