



An  
Bord  
Pleanála

## Inspector's Report

### ABP-316316-23

#### Development

Construction of a residential development consisting of 37 residential units and all associated ancillary works.

#### Location

Lands to the north of Whitestown Road and to the south of Old Road, Rush, Co. Dublin

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

F23A/0024

#### Applicant(s)

Milium Ventures Ltd.

#### Type of Application

Permission.

#### Planning Authority Decision

Refuse Permission

#### Type of Appeal

First Party

#### Appellant(s)

Milium Ventures Ltd..

#### Observer(s)

Rush Community Development Committee.

**Date of Site Inspection**

24<sup>th</sup> April 2024.

**Inspector**

Lucy Roche

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## 1.0 Site Location and Description

- 1.1. The appeal site is located at the junction of Old Road and Whitestown Road, in Rush, c800m west of Upper Main Street. Whitestown Road, part of the R128 regional route, extends along the site's southern boundary; it is the main access road to Rush from the west, connecting Rush to the Rush and Lusk Train Station (c2km to the west) and to the settlement of Lusk beyond.
- 1.2. The site itself has a stated area of 0.7918ha, it is roughly triangular in shape and has a gradual slope in a northeast to southwest direction, at a gradient of 1:60 (as stated). The existing site levels are up to 1m lower than the adjacent road network. The site comprises an agricultural field and a separate plot to the east containing a derelict cottage and outbuilding. Site boundaries include a hedgerow interspaced with mature trees to the south along Whitestown Road and a grassed earth mound to the north, along Old Road. A footpath extends along the site's southern boundary, the boundary with Whitestown Road. A small dedicated green area lies to the immediate west of the site, at the junction of Whitestown Road and Old Road. This area marks the entrance to Rush with a 'Welcome to Rush' sign and the start of the 60km speed limit zone.
- 1.3. Existing development in the vicinity comprises mainly low-density housing (detached houses on large plots) that has developed in a liner fashion to the east along Old Road. Lands to the north, south and west are used primarily for agriculture / horticulture.

## 2.0 Proposed Development

- 2.1. Planning permission has been sought for:
  - (i) The demolition of existing single-storey derelict cottage (c. 59sq.m) and associated outbuilding.
  - (ii) The construction of a residential development consisting of 37 no. residential units as follows:
    - (a) 9 dwellings, comprising 8 no. terraced two-storey dormer, three-bedroom dwellings with attic accommodation (3-storey) and 1 no. two-storey, two-bedroom dwelling.

Dwellings are arranged in to terraced blocks (Blocks A and B). Each dwelling is provided with 2 no. on-curtilage car parking spaces and private amenity space in the form of rear private gardens.

- (b) 28no apartment / duplex units in 4 no. three-storey duplex blocks (Block C, D, E and F).

Blocks C and F each comprise 4 no. two-bedroom units at ground floor level and 4 no. three-bedroom units at first and second floor levels.

Blocks D and E each comprise 3 no. two-bedroom units at ground floor level and 3 no. three-bedroom units at first and second floor levels.

Each unit comprised within Blocks C, D, E and F will be served by private amenity space in the form of balconies at first floor level and terraces at ground floor level.

- (iii) A total of 30 no. car parking spaces, including 1 no. go-car car share space and 1 no. accessible parking space are proposed at surface level to serve the proposed duplex blocks, together with 2 no. bicycle stores comprising a total of 86 no. cycle parking spaces.
- (iv) Provision of landscaped open space.
- (v) Provision of a new vehicular access off Old Road to the north, a new pedestrian access to Whitestown Road to the south, and public footpaths and shared surfaces. A new 2m wide footpath is proposed along the boundary with Old Road.
- (vi) Drainage works including the provision of a new foul pump station on site.
- (vii) Landscaping and boundary treatments, open space, foul and surface water drainage, bin stores, lighting, infrastructural works, and all associated ancillary works necessary to facilitate the proposed development.

2.2. Table 2.1 below provides a summary of the key aspects of the proposed development as originally presented and as amended:

<b>Table 2.1</b>	
<b>Site Area</b>	0.7918ha
<b>No. Of Residential Units</b>	37
<b>Gross Floor Area</b>	3,930sqm
<b>Housing Mix</b>	Refer to table 2.2 below
<b>Density</b>	47units per hectare
<b>Height</b>	Two – three storeys with ridge heights ranging from between 9.34m and 10.79m
<b>Material Finishes</b>	Mix of brick and render
<b>Access</b>	Vehicular access of Old Road to the north. Pedestrian and cycle access to Whitestown Road.
<b>Car Parking</b>	48 (2 in curtilage spaces per dwelling; 30 spaces, including 1 go car space for apartments)
<b>Cycle Parking</b>	86 no. spaces (apartments)
<b>Open Space</b>	1,453sqm or c18.3% of the site area

2.4. Table 2.2 below provides detail of the proposed housing mix.

<b>Table 2.2 Housing Mix</b>			
<b>Houses</b>	<b>Unit Type</b>	<b>No. of Units</b>	<b>%</b>
	2 bed Two Storey	1	3
	3 Bed Two Storey + attic	8	21
<b>Apartments</b>	3 bed Duplex	14	38
	2 bed apartments	14	38

2.5. The application is accompanied by (inter alia):

- Screening for Appropriate Assessment
- Planning Report
- Design statement.
- Photomontages and Positional Imagery
- Housing Quality assessment
- Engineering Report
- Stage 1 Road Safety Audit
- Bat Report
- Odour and Noise Impact Assessment
- Arboriculturally Report

### 3.0 **Planning Authority Decision**

#### 3.1. **Decision**

Fingal County Council decided to refuse permission for the development for four reasons as follows:

- 1 The layout and design of the proposed development by way of the 4 no. three-storey duplex blocks would constitute overdevelopment of this site and would be incongruous with the established pattern of development in the vicinity. The proposed development, is considered to be inconsistent with the prevailing pattern of development in the vicinity, would be injurious to the amenities of the area and would therefore contravene materially Objective PM44 of the Fingal County Development Plan 2017-2023. Having regard to the location of the proposed development to the southwestern outer area of the Rush Development Boundary, and Objective SS20 of Fingal County Development Plan 2017-2023 which seeks to 'Manage the development and growth of....Rush in a planned manner linked to the capacity of local infrastructure to support new development', it is considered that the proposed development would contravene materially Section 28 guidelines and the Development Plan

policies and objectives for the area, the proposal would for those reasons be contrary to the proper planning and development of the area.

- 2 The subject site is located at an entry point to Rush to the north of a 'Highly Sensitive Landscape' in the Fingal Development Plan 2017-2023. The proposed development, by reason of its design and siting, would be seriously injurious to the visual amenities of the area, would constitute an unduly obtrusive and visually prominent feature in the landscape, would be out of character with the existing pattern of development in the area and would materially contravene Objective NH36 of the Fingal Development Plan 2017-2023 which seeks to 'Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area'. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
- 3 The proposed development would be injurious to the residential amenities of future residents by reason of the substandard open space layout to serve recreational requirements. The open space proposed includes a foul pumping station and lies adjacent to a reinforced vehicular access and car parking. The absence of communal open space and the inadequacy in car parking provision are also considered significant deficiencies. The proposed development would be injurious to the residential amenities of an adjoining residence by reason of overlooking and overbearance and would also be injurious to the residential amenity of future residents by reason of overlooking. It is considered the proposed development would, therefore be contrary to The Sustainable Residential Development in Urban Areas Guidelines (DoEHLG May 2009) issued to Planning Authorities under Section 28 of the Planning and Development Act 2000 (as amended) and, as such, would be contrary to the proper planning and development of the area.
- 4 The proposed foul pump station, infrastructure is within approximately 31m of proposed residential units, and would therefore materially contravene Objective WT12 of the Fingal Development Plan 2017-2023 which seeks to 'Establish an appropriate buffer zone around all pumping stations



suitable to the size and operation of each station. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the Planning Officer (March 2023) forms the basis of the planning authority's decision. The report has regard to the locational context and planning history of the site / surrounding area; to local and national planning policy and guidance and to the third-party submission and departmental reports received. The following provides a summary of the main points raised in the assessment of the Planning Officer:

- The proposed residential scheme is considered to accord with the 'RS' zoning objective for the site. However, it is considered that the proposed development would be injurious to the visual amenities of the area, would be out of character with the existing pattern of residential development in the area and would give rise to overdevelopment of the site.
- The proposed development would negatively impact on the residential amenities of future users and of existing properties in the area.
- The report concludes with a recommendation to refuse permission as per FCC decision.

#### 3.2.2. Other Technical Reports

Water Services: Report dated 9<sup>th</sup> March 2023 recommended further information in relation to the provision of a gravity foul sewer connection and details of proposed discharge ditch.

Transport: Report dated 7<sup>th</sup> March 2023 recommended that further information be sought in relation to sightlines at the entrance, parking, design and layout, EV charging, taking in charge.

Parks and Green Infrastructure: Report dated 25<sup>th</sup> January 2023 recommended that further information be sought regarding the design, layout and maintenance of the public / communal open space areas,

the long-term retention of trees along the southern boundary and tree planting.

Archaeology: Report dated 15<sup>th</sup> March 2023 cites no objection to the proposal.

### 3.3. Prescribed Bodies:

None.

### 3.4. Third Party Observations

The planning authority received third-party submissions from residents and local representatives (Councillors). The issues raised can be summarised as follows:

- The site is not serviced by public infrastructure and Rush as a settlement is poorly serviced in terms of both public and social infrastructure.
- The proposal, in terms of density, layout, height and design would be out-of-keeping with existing development in the area and would detract from the character of the area and would represent overdevelopment of the site.
- The proposal would impact on the residential amenities of existing properties by way of overlooking, obstruction of views and devaluation of property.
- Footpaths should be provided on both sides of the entrance.
- Existing trees should be retained.
- Insufficient and poor quality public open space.
- Inadequate private open space for duplexes.
- Non-compliance with Apartment Guidelines.
- Inadequate parking provision.
- Lack of four bed houses.

## 4.0 Planning History

### Appeal Site:

No relevant planning history on site.

**Surrounding Sites:**

PARTXI/005/20 Approval for 61no. residential units (including 7no duplex units over 7no apartments) on lands c120m to the northeast. Currently under construction.

## 5.0 Policy Context

### 5.1. Development Plan

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

#### 5.1.1. Fingal County Development Plan 2017-2023 (FDP 2017):

The following objectives of the now defunct Fingal County Development Plan 2017-2023 are noted for reference:

Objective PM44 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.  
Fingal County Development Plan 2023-2029 (FDP 2023)

Objective SS20 Manage the development and growth of Lusk, Rush and Skerries in a planned manner linked to the capacity of local infrastructure to support new development.

Objective NH36 Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly sensitive areas

shall not be permitted if it: • Causes unacceptable visual harm • Introduces incongruous landscape elements • Causes the disturbance or loss of (i) landscape elements that contribute to local distinctiveness, (ii) historic elements that contribute significantly to landscape character and quality such as field or road patterns, (iii) vegetation which is a characteristic of that landscape type and (iv) the visual condition of landscape elements.

Objective WT12      Establish an appropriate buffer zone around all pumping stations suitable to the size and operation of each station. The buffer zone should be a minimum 35 metres – 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise.

#### 5.1.2. **Fingal County Development Plan 2023-2029 (FCDP 2023-2029)**

The appeal site is zoned 'RS Residential' with the associated land use objective to *provide for residential development and protect and improve residential amenity*. The Vision for this land use objective is to *ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity*. Residential is listed as a use class that is 'permitted in principle' within this zoning objective.

Rush is identified in the Core Strategy as a **Self-Sustaining Town**.

**Chapter 14** sets out the Development Management Standards for the plan area.

The following **policies and objectives** of FCDP 2023-2029 are of note:

Policy CSP36 - Focus Growth Within and Contiguous to Core in Self-Sustaining Towns:

Support the sustainable long-term growth of Self-Sustaining Towns by focusing growth within and contiguous to the core to create a critical mass of

population and employment based on local demand and the ability of local services to cater for sustainable growth levels.

**Policy SPQHP35 - Quality of Residential Development:**

Promote a high quality of design and layout in new residential developments at appropriate densities across Fingal, ensuring high-quality living environments for all residents in terms of the standard of individual dwelling units and the overall layout and appearance of developments. Residential developments must accord with the standards set out in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG 2009 and the accompanying Urban Design Manual – A Best Practice Guide and the Sustainable Urban Housing; Design Standards for New Apartments (DHLGH as updated 2020) and the policies and objectives contained within the Urban Development and Building Heights Guidelines (December, 2018). Developments should be consistent with standards outlined in Chapter 14 Development Management Standards

**Objective SPQHO34 – Integration of Residential Development:**

Encourage higher residential densities where appropriate ensuring proposals provide for high quality design and ensure a balance between the protection of existing residential amenities and the established character of the surrounding area with a target minimum amount of 15% (except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply) amount of green space, tree coverage and public space associated with every residential area.

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

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.

**Objective GINHO59 – Development and Sensitive Areas**

Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly sensitive areas shall not be permitted if it:

- Causes unacceptable visual harm.
- Introduces incongruous landscape elements.
- Causes the disturbance or loss of (i) landscape elements that contribute to local distinctiveness, (ii) historic elements that contribute significantly to landscape character and quality such as field or road patterns, (iii) vegetation which is a characteristic of that landscape type and (iv) the visual condition of landscape elements.

#### Objective DMSO23 - Separation Distance

A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. In residential developments over three-storeys in height, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs.

#### Objective DMSO71 – Overshadowing of Private Open Space:

Ensure private open spaces for all residential unit types are not unduly overshadowed.

#### Objective DMS075 – Communal Open Space:

Require communal amenity space within apartment developments, in the form of semiprivate zones such as secluded retreats and sitting out areas, complies with or exceeds the minimum standards set out in Table 14.14.

#### Objective IUO7 - Buffer Zones around Pumping Stations

Establish an appropriate buffer zone around all pumping stations suitable to the size and operation of each station. The buffer zone should be a minimum

35 metres – 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise. For small scale developments (less than 15 houses) a smaller buffer zone may be agreed with the Planning Authority.

## 5.2. **National Policy and Guidelines**

### 5.2.1. Eastern and Midland Regional Assembly – Regional Spatial and Economic Strategy (RSES) 2019.

The RSES is underpinned by key principles that reflect the three pillars of sustainability: Social, Environmental and Economic, and expressed in a manner which best reflects the challenges and opportunities of the Region. It is a key principle of the strategy to promote people’s quality of life through the creation of healthy and attractive places to live, work, visit and study in.

*Policy Objective 4.83:* Support the consolidation of the town and village network to ensure that development proceeds sustainably and at an appropriate scale, level, and pace in line with the core strategies of the county development plans.

### 5.2.2. National Planning Framework

The National Planning Framework addresses the issue of ‘making stronger urban places’ and sets out a range of objectives which it considers would support the creation of high-quality urban places and increased residential densities in appropriate locations while improving quality of life and place. Relevant Policy Objectives include:

- National Policy Objective 4: Ensure the creation of attractive, liveable, well designed, high quality urban places that are home to diverse and integrated communities that enjoy a high quality of life and well-being.
- National Policy Objective 13: In urban areas, planning and related standards, including in particular building height and car parking, will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated

outcomes, provided public safety is not compromised and the environment is suitably protected.

- National Policy Objective 33: Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location.
- National Policy Objective 35: Increase residential density in settlements, through a range of measures including reductions in vacancy, re-use of existing buildings, infill development schemes, area or site-based regeneration and increased building heights.

### 5.2.3. Section 28 Ministerial Guidelines

Having considered the nature of the proposal, the receiving environment, the documentation on file, including the submissions from the planning authority, I am of the opinion that the directly relevant Section 28 Ministerial Guidelines are:

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024)
- Urban Design Manual, A Best Practice, 2009
- Quality Housing for Sustainable Communities: Design Guidelines, 2007
- Design Standards for New Apartments Guidelines for Planning Authorities - (July 2023)
- Design Manual for Urban Roads and Streets, 2013

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

The following sites are within 15km of the appeal site.

- Rogerstown Estuary SPA (004015)
- Northwest Irish Sea c.SPA (004236)
- Lambay Island SPA (004069)
- Skerries Islands SPA (004122)
- Rockabill SPA (004014)
- Malahide Estuary SPA (004025)
- Baldoyle Bay SPA (004016)



- Irelands Eye SPA (004117)
- North Bull Island SPA (004006)
- Howth Head Coast SPA (004113)
- Rogerstown Estuary SAC (000208)
- Rockabill to Dalkey Island SAC (003000)
- Lambay Island SAC (000204)
- Malahide Estuary SAC (000205)
- Baldoyle Bay SAC (000199)
- Irelands Eye SAC (002193)
- North Dublin Bay SAC (000206)
- Howth Head SAC (000202)

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

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**

This is a first party appeal, lodged on behalf of the applicants, Milium Ventures Ltd against the decision of Fingal County Council to refuse permission for a residential scheme in Rush. The grounds of appeal can be summarised as follows:

- The proposed development is consistent with the sites' 'RS – Residential' zoning objective, does not have an adverse impact on adjoining residential amenities and accords with the proper planning and sustainable development of the area. Residential is permitted in principle use on RS zoned lands.

- The proposed development represents the most efficient and sustainable use of suburban zoned and serviced lands for the purpose of providing much needed additional residential accommodation in the north Dublin area. The land plot is within a short walking distance of existing bus stops situated along Whitestown Rd. Is located along Bus Connects routes L85 and X76 and is the most proximate residential RS zoned land site in the Rush development boundary to the Rush and Lusk train station.
- The subject land plot is irregular in shape which inevitably represents challenges in developing an appropriate residential scheme which responds to the density requirements of approximately 35 to 50+ hectares as required by the 2009 Guidelines on Sustainable Residential Development in Urban Areas. The applicant contends that the proposed proposal strikes an appropriate balance between the reasonable protection of the amenities of adjacent dwellings, the evolving character of the area and the need to provide residential development at sustainable densities in proximity to public transport services.
- The proposal, as submitted to Fingal County Council, provides for a mix of tenures including 2- and 3-bedroom houses, apartments and duplex units which will meet the needs of all stages of the life cycle. According to the 2016 census data, 2, 3 and 4 person households make up approximately 47% of the population of Fingal and while more traditional house developments continue to be the predominant form of housing type in Fingal there is evidence to suggest that this is changing, and that apartment living will start to become more prevalent. The proposal accords with these demographics and will foster the establishment of a diverse and balanced community.
- The applicant contends that the proposed development is appropriately scaled (providing building heights ranging from two to three storeys) and is appropriately designed, using high quality palette of materials and appropriate boundary landscaping, to allow its assimilation into the area. While the proposal will result in a visual change at the entry point to Rush, it is considered that this change will be positive creating a sense of arrival and an appropriate architectural expression at this location.

- The proposed residential units have been designed in accordance with the development management standards and space requirements outlined in the Fingal Development Plan 2023 to 2029, the 2022 Apartment Guidelines and the 2007 Guidelines on Quality Homes for Sustainable Communities. Each of the proposed units meets if not exceeds the space requirements set out in the above guidance documents providing a high-quality living environment for perspective residence a significant proportion of the site has also been reserved to provide for a large open space area.
- The scheme complies with the relevant national and regional planning frameworks including the National Planning Framework and the regional spatial and economic strategy which promotes compact and consolidated growth within the built-up area of towns and villages.
- It is considered that in place of the decision to refuse permission the planning Authority could have sought further information to address their concerns which relate to the perception of overdevelopment on site which notably overlaps across 3 no. of the refusal reasons. Given that the applicant was not afforded the opportunity to submit further information, an alternative design option for the site has been prepared as part of the first party appeal which seeks to overcome the concerns of Fingal County Council. As part of its assessment of the application these amendments could be adopted in part or in full by the board by way of condition.
- It is submitted that the proposed development is consistent with the national and local level policy direction and is in accordance with the proper planning and sustainable development of the area as such it is requested that the Board overturn the decision of Fingal County Council and grant permission for the proposed development.

## 6.2. Planning Authority Response

- No further comment.
- In the event that the appeal is successful provision should be made in the determination for applying financial contribution in accordance with the Council's Section 48 Development contribution scheme

### 6.3. Observations

One observation has been received from the Rush Community Development Committee. The issues raised can be summarised as follows:

- Rush is poorly served in terms of transport infrastructure (heavily congested Roads, reduced bus services poor rail service), and social infrastructure (inadequate health and GP services, lack of school places, no garda station, no bank, and limited recreational areas). It is also experiencing business closure and anti-social behaviour.
- The appeal site is located at the entrance to the town in an area still active in agriculture. The proposed development in terms of its height (three storey) and density is excessive and unacceptable. The site is not suitable for apartments / three storey units.
- The road is not wide enough on either side for bicycles.
- Insufficient and poor quality public open space.
- The proposed development fails to provide a sense of place.
- National Landscape Strategy (Actions 8,9 and 16) are relevant.

## 7.0 Assessment

### 7.1. Introduction

7.1.1. Having examined the appeal details and all other documentation on file, including all of the submissions received in relation to the appeal, the reports of the local authority and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Density
- The Impact of the Proposed Development on the Visual Amenities and Character of the Area

- Impact on Existing Residential amenity
- Residential Amenity for Future Occupants
- Foul Drainage – Location of the Pumping Station
- Alternative Design Proposals for Consideration
- Appropriate Assessment.

7.1.2. This is a first party appeal lodged against the decision of Fingal County Council to refuse permission for the construction of 37 residential units in Rush. The planning authority assessed the scheme against the provisions of the Fingal Development Plan 2017 - 2023, which was the relevant statutory plan in place when the application was decided. The current development plan was adopted in April 2023 and my assessment is based on the policies and objectives of the current statutory plan, which is the Fingal Development Plan 2023-2029 (FDP 2023-2029).

## 7.2. Principle of Development -

7.2.1. The appeal site is zoned 'RS Residential' with the associated land use objective *to provide for residential development and protect and improve residential amenity*. The 'Vision' for this land use objective is to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity. 'Residential' is a permitted use within the RS zoning.

7.2.2. The planning authority in their first reason for refusal consider that the proposed development, due to its location at the southwestern outer area of the Rush Development Boundary, is contrary to Objective SS20 of the FCDP 2017-2023. As noted above my assessment is based on the policies and objectives of the current statutory plan, which is the Fingal Development Plan 2023-2029. Objective SS20 of the FDP 2017-2023 sought to manage the development and growth of Rush in a planned manner linked to the capacity of local infrastructure to support new development. Objective SS20 was not carried forward to the current plan however the plan does include various policies and objectives to guide the development of Rush as a Self-Sustaining Town, including inter alia, Policy CSP36 which seeks to *support the sustainable long-term growth of Self-Sustaining Towns by focusing*

*growth within and contiguous to the core to create a critical mass of population and employment based on local demand and the ability of local services to cater for sustainable growth levels.*

- 7.2.3. The appeal site comprises a greenfield site on the western outskirts of Rush. Notwithstanding its peripheral location, the site is within walking distance (c650m) of the town centre / core retail area and within a reasonable commute (c2km) of the Rush and Lusk Train Station which is accessed via Whitestown Road. The site is served by a footpath along its southern boundary facilitating pedestrian access eastwards to the town centre and westwards to the train station. A medium frequency bus service also runs along Whitestown Road with stops within 250m of the appeal site. The proposed development is to connect to public mains water and sewerage. The application is accompanied by a letter of confirmation from Uisce Eireen confirming that both water and wastewater connections are feasible subject to approximately 210m of network extension to facilitate connection to the wastewater network, to be funded by the applicant. In my view the development of this site for residential purposes would support the sustainable growth of Rush. While I note the concerns raised by the Observers to this appeal regarding deficiencies in transport and social infrastructure serving Rush, I am satisfied that the town, is sufficiently serviced to accommodate a development of the nature and scale proposed and that the proposed scheme of 37 residential units is unlikely to overwhelm existing retail, education, and social services in the area.
- 7.2.4. Overall, I am of the opinion that the development of these zoned and serviceable lands for residential purposes is acceptable in principle.

### 7.3. **Density**

- 7.3.1. The FDP 2023-2029 does not set out blanket density standards. The planning authority in their assessment of the application had regard to the Sustainable Residential Development in Urban Areas, Guidelines 2009 which sets out density standards for residential development across a range of settlement types and areas. The planning authority classified the appeal site as an 'Outer Suburban /Greenfield site', where a net density of 35-50 dwellings per hectare is recommended to achieve

the greatest efficiency in land usage. The Board will note that the 2009 Guidelines have since been superseded by the Sustainable Residential Development and Compact Settlements Guidelines, 2024. It is a policy and objective of these Guidelines (Table 3.5) that residential densities in the range 30 dph to 50 dph (net) shall generally be applied at suburban and urban extension locations of Key Towns and Large Towns. As per the guidelines suburban areas are the low-density car-orientated residential areas constructed at the edge of the town, while urban extension refers to greenfield lands at the edge of the existing built-up footprint area that are zoned for residential or mixed-use (including residential) development. A Large Town is identified as a settlement with a population of over 5,000. Having regard to the greenfield nature of the site, its location on the edge of the built-up area of Rush and its residential zoning it is my view that the site is within an urban extension location of a large town and that a density in the range of 30 dph to 50 dph would be acceptable in principle.

- 7.3.2. The proposed scheme has a density of 47 units per hectare which falls within the acceptable density range for urban extension locations in Large Towns. While I would acknowledge that the density proposed is notably higher than that of the surrounding area, which is dominated by low density housing, it nevertheless provides for a comparatively small-scale development of 37 no. residential units, on serviceable lands within walking distance of Rush Town Centre and within proximity to public transport. I therefore have no objection in principle to the density of development proposed. However, regard is had to the policies and objectives of the FDP 2023-2029, notably Policy SPQHP35 which seeks to *promote a high quality of design and layout in new residential developments at appropriate densities across Fingal, ensuring high-quality living environments for all residents* and Objective SPQHO34 which seeks to *encourage higher residential densities where appropriate ensuring proposals provide for high quality design and ensure a balance between the protection of existing residential amenities and the established character of the surrounding area*. Essentially, the scale of development permissible on site is dependent on the quality of the scheme proposed in terms of how it integrates with the established character of the area, how it impacts the residential amenities of adjoining properties and the level of residential amenity to be afforded to future

occupants. These issues are to be considered in more detail in the following sections of this report.

#### **7.4. Impact on the Visual Amenities and Character of the Area.**

7.4.1. The planning authorities first two refusal reasons relate to the impact of the proposed development on the visual amenities and character of the area. In their first reason for refusal the planning authority considers that the layout and design of the proposed development would constitute an overdevelopment of the site, would be inconsistent with the prevailing pattern of development in the vicinity and would be injurious to the amenities of the area. They conclude that the proposal would be contravene materially Objective PM44 of the Fingal County Development Plan 2017-2023 and Section 28 Guidelines. In their second reason for refusal, the planning authority notes that the appeal site is located at an entry point to Rush to the north of a 'Highly Sensitive Landscape' and considers that the scheme due to its siting and design would be seriously injurious to the visual amenities of the area, would constitute an unduly obtrusive and visually prominent feature in the landscape and would materially contravene Objective NH36.

7.4.2. Objective PM44 has been replaced by Objective SPQHO42 in the current plan. Both objectives aim 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. In my view the appeal site is not an infill, corner, or backland site but a greenfield site on the edge of the built-up area, therefore, this policy is not considered relevant to this assessment. Objective GINHO59 of the current plan has replaced Objective NH36. Both objectives seek to ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. The Board will note that the appeal site is not located within a 'highly sensitive landscape' and is not subject to any designation. The lands to the south of the appeal site, on the opposite side of Whitestown Road are within a highly sensitive landscape, these lands are zoned general employment and are to be subject to a framework plan - FP6 Whitestown. In light of the above



and having regard to generality of the objective, I am satisfied that the proposed scheme would not materially contravene Objective GINHO59 of the current development plan and therefore the Board should not consider itself constrained by Section 37(2) of the Planning and Development Act. Notwithstanding, the design and layout of the proposed development and its impact on the visual amenities and character of the area are relevant considerations in the assessment of appeal.

7.4.3. The proposed scheme involves the development of a Greenfield site on the western edge of the built-up area of Rush. The site occupies a prominent location at the junction of Old Road and Whitestown Road, on one of the main approach roads to the settlement. Existing residential development in the vicinity of the site comprises low density housing which has developed in a linear manner along Old Road to the east. There are signs that the existing pattern of development in the area is changing with new infill developments resulting in increased densities and more compact growth. I refer the Board to the housing scheme approved under FCC Ref: PARTXI/005/20 and currently under construction, c120m to the northwest.

7.4.4. The proposed development includes the construction 37 residential units in five blocks generally laid out in a linear pattern along the southern and eastern site boundaries. Access to the site is proposed via a new vehicular entrance off Old Road to the north and pedestrian access from Whitestown Road to the south. Internal access roads traverse the site from north to south and east to west. An area of public open space is proposed on the northern portion of the site, this space is bounded by internal roads and parking and incorporates a proposed pump station and associated access. The quantum of hard surfaced areas proposed within the scheme (internal access roads, parking, and ancillary service areas etc) would appear to be excessive, and I have concerns that this would detract from overall layout and appearance of the development while also leading to ad-hoc parking. A new boundary wall, c1.8m high is to be erected along the southern boundary, the boundary with Whitestown Road, breaking at the proposed pedestrian access between Housing Block B and Apartment Block C. A new 1.2m high bow top metal railing is proposed along the boundary with Old Road.

- 7.4.5. As previously established, I have no issue, in principle, with the density proposed. Development at this density allows for a mix of house type, size, and tenure to cater for a variety of housing need which in turn contributes to the establishment of more sustainable residential communities. The proposed scheme provides for a mix of two and three-bedroom units in a range of formats (houses, apartments, and duplexes). The mix of units proposed is I consider acceptable, and I note that the planning authority raised no objection in this regard.
- 7.4.6. Observers have raised concerns regarding the height and nature of the proposed scheme (apartments), which they consider would be out of character with the area. The proposed residential structures range in height from 9.34m to 10.79m which I do not consider excessive for greenfield sites. In my opinion the appeal site, due to its prominent location at the entrance to Rush and between two public roads, lends itself to an apartment scheme. An appropriately designed and arranged apartment scheme on this site could act as landmark, defining the entrance to the settlement and the start of the built-up area while also making efficient use of zoned and serviceable land within walking distance of the town centre. Appropriately designed apartment schemes also allow for multiple active elevations which can provide high levels of passive surveillance, externally to public roads, and internally to public amenity areas, thereby contributing to the safety and enjoyment of these areas. That being said, having considered the plans and particulars submitted in support of the application and appeal, including the applicants Design Statement and Photomontages, and having inspected the site and surrounding area, I am not satisfied that the design and layout of the development as proposed represents an acceptable design solution for this prominent site. In particular, I consider that the proposed scheme, due to the siting, design and orientation of Duplex Blocks C, D, E and F and the proposed treatment of the southern site boundary, provides an inappropriate response to the Whitetown Road, as one of the main approach roads to Rush.
- 7.4.7. Duplex Blocks C, D, E and F are arranged in a liner fashion along the southern site boundary, their primary aspect is to the north, overlooking the proposed area of open space or in the case of Block E, Old Road. Southern elevations, those overlooking the Whitetown Road, are less active, offering little in the way of passive

surveillance. Effectively, Blocks C, D, E and F back on to the Whitestown Road. This together with the construction of a c1.8m high wall along the southern site boundary would, I consider create an inactive street frontage along the Whitestown Road that would detract from rather contribute to the visual amenities and character of the area. In addition, I would agree with the opinion of the local authority Case Planner, that Block F due to its siting, orientation and design would result in a visually obtrusive feature at the junction of Whitestown Road and Old Road that would detract from the visual amenities of the area.

## **7.5. Impact on Existing Residential Amenity**

- 7.5.1. The planning authority's third reason for refusal considers that the proposed development, would be injurious to the residential amenities of the adjoining property to the east by reason of overlooking and overbearance. The property in question comprises a detached bungalow (with first floor accommodation) on a large plot (c0.2ha). It is the opinion of the planning authority, as set out in the report of the case planner, that the 9no. houses (Blocks A and B) proposed in the eastern portion of the site would, due to their height (ranging between 9.34m and 10.08m) and proximity to the site boundary (8.12m – 9m), overlook the neighbouring property and compromise the future development potential of the lands. They also consider that Block A would have an overbearing impact on the existing dwelling.
- 7.5.2. Objective DMSO23 of the FCDP 2023-2029 requires (subject to design) a minimum separation distance of 22m between directly opposing rear first floor windows. Separation distances are considered further in Section 14.8.2 of the Plan, which notes that while observance to the standard 22 metre separation distance, would normally result in a minimum rear garden depth of 11 metres, this may be reduced where sufficient alternative private open space is available and subject to the maintenance of privacy and protection of adjoining residential amenities.
- 7.5.3. The planning authority refer to the Sustainable Residential Development in Urban Areas Guidelines (2009) in their refusal reason; as previously noted, the 2009 guidelines have been superseded by the Sustainable Residential Development and

Compact Settlement Guidelines. In accordance with the provisions of Section 34 of the Act, when making a decision in relation to an application that includes a residential element, the planning authority is required to have regard to the policies and objectives of the 2024 Guidelines and to apply the specific planning policy requirements (SPPRs). SPPR 1 of the Guidelines relates to Separation Distances. It stipulates that when considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units, and apartment units, above ground floor level shall be maintained. While the siting of the existing dwelling to the east has not been clearly detailed on the layout plans, I am satisfied based on the information available including my observations during site inspection, that the required separation distance of 16m between opposing windows has been achieved. I am therefore satisfied that the proposed scheme would not unduly overlook the neighbouring residential property to the east.

- 7.5.4. Observance to the revised standard for separation distance (16m) would, I consider, normally result in a minimum rear garden depth of 8 metres, which is achieved for all units in Block A and B. Therefore, in my opinion, the development of this site as proposed would not compromise the development potential of the neighbouring lands to the east.
- 7.5.5. In relation to overbearance. Block A, a terrace of five houses, comprises one two-storey house (the closest to the neighbouring house) with a ground to ridge height of 9.34m, and four, three-storey houses with an increased ridge height of 10.08m, facilitating additional second floor accommodation at attic level. The design of Block A incorporates a traditional pitched roof and rooflights to the rear (serving only non-habitable rooms). In my opinion the height of the proposed dwellings is not excessive in an urban context, albeit at the edge of a settlement. While it is acknowledged that the proposed houses would exceed the height of the existing dwelling to the east (as detailed on Contextual elevation 1, Drawing No. G06, submitted to the PA 25<sup>th</sup> January 2023) and would be visible from that property, I am satisfied, given the height and design of the proposed houses, the available separation distances and the context of the neighbouring property (large plot size) that no undue overbearing impact would occur.

7.5.6. In conclusion, I am satisfied that the development of this site as proposed would not have a significant negative impact on the residential amenities of the adjoining property to the east. I therefore do not recommend that the Board uphold the planning authority's decision on this issue.

## 7.6. Residential Amenity for Future Occupants

7.6.1. The planning authority's third reason for refusal also considers that the proposed scheme would be injurious to the residential amenity of future residents by reason of substandard public open space layout, the absence of communal open space for apartment / duplex units, inadequate parking and overlooking.

7.6.2. The applicants have provided a quantitative assessment of the proposed residential units to demonstrate compliance with development standards set out in the Quality Housing for Sustainable Communities (2007) and Sustainable Urban Housing: Design Standards for New Apartments. This document indicates that all units generally meet or exceed the minimum requirements in terms of floor area, storage, and dual aspect ratio.

7.6.3. Each of the proposed housing units are provided with an area of private open space in the form of rear gardens, ranging in size from 62sqm-106sqm. Private open space for the proposed duplex/ apartment units is provided in the form of ground floor terraces and balconies, all of which exceed the required quantitative standard. All private amenity areas adjoining the main living areas.

7.6.4. Section 3.5 of the Apartment Guidelines state that private amenity space should be located to optimise solar orientation and designed to minimise overshadowing and overlooking. The Guidelines, in Section 6.5, also highlight the importance of adequate natural light in new apartment developments and state that in assessing development proposals, planning authorities must weigh up the overall quality of the design and layout of the scheme and the measures proposed to maximise daylight provision with the location of the site and the need to ensure an appropriate scale of urban residential development.

7.6.5. In this instance I note that all duplex units (first and second floor levels) are served solely by north facing balconies, bounded by brick wall. I have concerns regarding the quantum of daylight that would be afforded to these areas and indeed to the living areas beyond, which are also primarily north facing. While the ground floor apartments in Blocks C, D and E are to be served by south facing terraces, these areas to be bounded by a 1.8m high brick wall which is to be erected on the development side of the existing hedgerow / mature tree boundary, at a distance of 4.4m to 5.2m from the rear / south elevation of Blocks C, D and E. The Board will note that Fingal's Transportation Planning Section have requested that the wall be set back further (c1m) within the site, to facilitate future road improvement works (NTA- greater Dublin Area Cycle Network). Having regard to the limited separation distance between the rear/south elevation of Blocks C, D and E, the proposed boundary wall, and the mature tree line beyond, I have concerns that the ground floor terraced areas would experience high levels of overshadowing, contrary to FCDP Objective DMS071 which seeks to *ensure that private open spaces for all residential unit types are not unduly overshadowed*. In addition, I note that the ground floor apartments in Blocks C, D and E, are designed with combined living, dining / kitchen areas that are relatively long (c8m) and narrow. I am concerned that these areas, particularly in mid-terrace units, would not achieve adequate levels of daylight. No daylight / overshadowing study has been submitted in support of the application. In light of the above and having regard to greenfield nature of the site, its location on the edge of the built-up area and strong southern aspect, I am of the opinion that the proposed scheme in terms of its design and layout fails to maximise daylight provision, thereby unduly compromising the residential amenity of future occupants.

7.6.6. No dedicated communal amenity space for the apartments has been provided within this scheme, instead the applicants have increased the quantum of public open space on site, and they consider this arrangement sufficient to meet the open space requirements of future residents. However, in my opinion that the proposal would be contrary to FCDP Objective DMS075 which requires *communal amenity space within apartment developments, in the form of semiprivate zones such as secluded retreats and sitting out areas*.

- 7.6.7. Standards for public open space are set out in Chapter 4, Community Infrastructure and Open Space and Chapter 14, Development Management Standards of the FDP 2023-2029. These standards require a minimum provision of public open space at a rate of 2.5ha per 1000 population (25sqm / person). For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. Section 14.13.2 of the FDP 2023-2029 states, in respect of the quantitative standard for public open space, that it is the intention of the Council to ensure, except under exceptional circumstances, public open space provision exceeds 12% of a development site area with a target minimum of 15% set for greenfield sites.
- 7.6.8. The proposed scheme comprises 37no. units with an occupancy rate equivalent to 99.5no. bed spaces and a total public open space requirement of 2,487sqm (99.5x25sqm). Excluding the 224sqm proposed in lieu of communal open space for apartments, the proposed scheme provides c1,229sqm of public open space which equates to 15.5% of the overall site area, exceeding the quantitative standard set out in the FDP. However, following consultation with the Parks and Green Infrastructure Division, the planning authority is of the opinion that the layout of the open space is inadequate to serve the recreational requirements of future residents. I would agree.
- 7.6.9. The proposed area of open space is positioned along the site's northern boundary with Old Road and is bounded by internal access roads and parking areas. The open space area includes lands dedicated to a proposed pumping station and its reinforced vehicular access and incorporates into its design SuDS measures including linear swales. In my opinion, the positioning of the pumping station, reinforced vehicular access and car parking together with the inclusion of SuDS features into the design of the amenity space would unduly compromise the usability and functionality of the space. I also agree with the assessment of the planning authority's Parks and Green Infrastructure Division that the proposed playground is poorly positioned beside the proposed pumping station and is obscured by parking and proposed landscaping.

- 7.6.10. In terms of car parking, Table 14.19 of the current FCDP sets a standard of 66no car parking spaces for the proposed residential scheme while SPPR3 of the Sustainable and Compact Settlements Guidelines would allow for a maximum parking rate of 2 no. spaces per dwelling (or a maximum of 74no spaces). For reference, the maximum car parking standards prescribed in SPPR3 do not include bays assigned for use by a car club, or accessible parking spaces but do include provision for visitor parking. The proposed scheme provides for 48no car parking spaces (2no spaces/house and 30spaces, including 1 go car space and 1 accessible parking space, for apartment /duplex units). Parking provision therefore falls below the standard set out in the FDCP and below the maximum standard set out in the Sustainable and Compact Settlements Guidelines. It is contended in the grounds of appeal that the provision of c66no car parking spaces is excessive and would result in a site layout which is dominated by car parking.
- 7.6.11. While I note that the car parking standards set out in the Sustainable and Compact Settlements Guidelines are maximum standards and that the guidelines support reduced parking ratios, at appropriate locations, I am not satisfied that the quantum of parking proposed in this case is sufficient to meet the needs of future occupants, in particular, I am not satisfied that sufficient visitor parking has been provided. Notwithstanding, I would not support the provision of additional carparking spaces on site, as I consider the scheme as its stands to be heavily dominated by hard surfaced areas (internal roads, parking, and ancillary areas for turning etc).
- 7.6.12. The site layout plan indicates two covered bike storage areas, Area 01 with 32no spaces and area no2 with 54no spaces along with separate bike storage for mid-terraced houses. The quantum of bicycle storage proposed would accord with SPPR4 of the Sustainable and Compact Settlements Guidelines.
- 7.6.13. The planning authority in their assessment of the application raised concerns regarding the overlooking between the proposed residential units and amenity areas. However, in my opinion, the design and orientation of proposed residential units and the separation distances available should ensure that no undue impacts in terms of overlooking occur.



7.6.14. In conclusion, I am not satisfied that the proposed scheme, due to its design and layout, would ensure a high-quality living environment for future residents. The proposed scheme would therefore be contrary to the policies and objectives of the FDP 2023-2029 and to the proper planning and development of the area.

## 7.7. Foul Drainage – Location of Pump Station

7.7.1. The planning authority, in refusal reason 4, consider that the location of the proposed foul pump station would materially contravene Objective WT12 of the Fingal Development Plan 2017-2023. Objective WT12 has been replaced by Objective IU07 in the current Plan. Both objectives seek to establish an appropriate buffer zone around all pumping stations and state that the buffer zone should be a minimum 35 metres – 50 metres from the noise/odour producing part of the pumping station to avoid nuisance from odour and noise [*emphasis added*]. The grounds of appeal confirm that a buffer zone of 29.6m is achieved between the noise producing pump and the odour vent stack and any proposed dwelling.

7.7.2. On the issue of materiality, the Board will note the use of the word ‘should’ in the objective which I consider to be suggestive, allowing for an element of flexibility in the application of the minimum standard. Therefore, in my view, Objective IU07 is not sufficiently specific to justify the use of the term “materially contravene”, and the Board should not consider itself constrained by Section 37(2) of the Planning and Development Act. Notwithstanding the above, as the proposed buffer zone does not meet the recommended minimum standard, I consider it appropriate to ensure that the location of the pump station would not give rise to nuisance from odour and noise.

7.7.3. At the outset, I note that the need for a pumping station to serve the proposed scheme has been outlined in the grounds of appeal (technical note prepared by Donnachadh O’Brien and Associates Consulting Engineers). The case is made that a pumping station is required having regard to the lowest proposed FFL level of +12.15m and the invert level of the existing manhole on the foul network of +13.43m. I accept the applicant’s position in this regard, and I note that Uisce Eireann (Irish

Water) in their 'Confirmation of feasibility' did indicate the need for a suitably sized pumping station and associated rising main to be installed on site.

7.7.4. The planning application was accompanied by a Noise and Odour Impact Assessment, prepared by TMS Environmental. The document confirms that the pump station has been designed and sized in accordance with the Irish Water Code of Practice for Wastewater Infrastructure and that the proposed buffer zone would exceed the minimum standard of 15m for medium sized pump stations prescribed in the CoP. The odour and noise assessments undertaken as part of the study, examined the site-specific and project specific factors that could affect the generation of noise and odour emissions. The assessments, which included detailed modelling, concluded that no odour or noise nuisance will occur for the selected separation distance. The planning authority have not queried the content of findings of the report, and I note that Fingal's Water Services Department in their report to the planning authority (09/03/2023) raised no issue in relation to the location of the pump station.

7.7.5. Therefore, based on the information available, I am satisfied that the proposed pump station has been located an appropriate distance from receptors sufficient to ensure that no noise or odour nuisance occur in accordance with Objective IU07. I do not recommend that the Board uphold refusal reason 4 of the planning authority's decision.

#### **7.8. Alternative Design Proposals for Consideration.**

7.8.1. As set in Section 3.0 of the grounds of appeal, the applicants are seeking full planning permission for the proposal as originally submitted to Fingal County Council on the 25<sup>th</sup> of January 2023 and they ask that the Board consider this option in the first instance. However, in response to FCC decision to refuse permission, the applicants have submitted an alternative design option for consideration by the Board. It is submitted that the amendments outlined could be adopted in part in full by the Board by way of condition.

7.8.2. Following consideration of the plans and particulars submitted, I am satisfied that the revised design proposals, do not represent a significant variation on the scheme as

originally presented to the Planning Authority in particular, I am satisfied that the alternative design options would not result in any new or additional undue impacts on the amenities of third parties.

7.8.3. In summary the alternative design option includes the following revisions to the plans submitted under FCC Reg. Ref: F23A/0024:

- An overall reduction in the number of units proposed from 37 to 30, resulting in a revised density of 37uph.
- The omission of duplex block, Block F, located within the western end of the site resulting in the loss of eight residential units.
- The garden depths of the proposed house units (Blocks A and B) located adjacent to the eastern side boundary have been increased to a minimum of 11m, resulting in the loss of one house.
- Block A reduced to a terrace of four houses comprising 1no. two-storey, four bed house (10.12m in height) and 3no. three-bedroom, three storey houses (10.08m in height), in lieu of 1no two-storey, two-bed house (9.35m in height) and four three storey house (10.08m in height).
- The scale of Block D has been increased to now include eight units (4no. ground floor apartments and 4no. three-bedroom duplex units) as opposed to six number units proposed at application stage.
- The cycle and bin stores have been consolidated and repositioned to the West of the site.
- The proposed pumping station has been repositioned from the northern portion of the site to the western portion of the site, in the position of the now removed Block F. The pumping station at this location would be c25.8m from the nearest resident units in Block E.

- The car parking provision has been revised with a total of 55no. spaces now proposed comprising 16no. in-curtilage spaces to serve the proposed housing units (2 space /unit), 33no spaces to serve the 22no apartment and 6no. visitor spaces.
- An additional pedestrian entrance has been provided along the Whitestown Rd. to allow ease of access for residents to the proposed residential cycle store.
- Duplex Clocks C, D and E have been set back from the road edge by a total of 5m. The 5m set back from the edge of the Whitestown Road is delineated by broken blue line on the revised site layout plan (Drawing No. G01).
- The revised Landscape Design plan (Drawing No.01) shows the proposed 1.8m high boundary wall confined to the rear of Duplex Blocks C, D and E over a distance of c80m. However, this plan does not show the boundary wall set back 5m from the road edge as requested by Fingal's Transportation Department.

7.8.4. I have reviewed the alternative design options submitted for consideration by the Board. While I would be of opinion that the suggested amendments represent an improvement to the scheme as originally presented, particularly in terms of public open space and parking provision, I am not satisfied that they are sufficient to ensure the delivery of a high-quality design in accordance with the provisions of the current Fingal Development Plan. In my opinion that the proposed scheme, as amended, fails to adequately address the Whitestown Road as one of the main approach roads into Rush and that as a result the proposal would detract from rather than enhance the streetscape, contrary to visual amenities and character of the area. In addition, I consider that the proposal as amended fails to provide an adequate level of residential amenity for future occupants of the proposed apartments in terms inadequate qualitative provision of private open space, the lack of dedicated communal open space and the failure to maximise daylight provision.

## 8.0 AA Screening

### Description of Project

- 8.1. I have considered the proposed scheme in light of the requirements of S177U of the Planning and Development Act 2000 as amended.
- 8.2. The subject site is located on the western outskirts of Rush in North County Dublin. The site is not within or adjacent to any designated site. As outlined in Section 5.5 of the above report, there are a number of designated sites within 15km of the subject site, of note are the Rogerstown Estuary SAC and SPA which are both located 0.8m to the south at the closest point.
- 8.3. The proposed development comprises the demolition of a derelict cottage and associated outbuilding and the construction of 37no residential units in a range of formats (houses, duplexes, apartments). The site is to be served by new entrance off Old Road to the north while a new pedestrian entrance is proposed to the south, off Whitestown Road. Site levels are to be raised by up to 1m to match existing road levels. Foul water is to be discharged to a public foul sewer on Old Road, pressurized by an on-site foul water pumping station. Rainwater from the proposed development, up to a 1 in 100-year rainfall event + 20% climate change will be discharged to ground within the site via a combination of permeable paving, bioretention swales and infiltration trenches. No formal discharge is proposed from the site. A high-level overflow is to be provided as an emergency outlet to prevent flooding on the site for events in excess of a 100-year rainfall event +20% climate change. A hydrobrake will be fitted to the overflow and will be limited to Qbar. The overflow surface water outfall will be installed along Old Road to connect to an existing culvert to the west of the site.
- 8.4. An Appropriate Assessment Screening document, prepared by NM Ecology was submitted with the planning application. Screening concludes with a finding of no significant effects. The Planning Authority in their assessment of the application noted possible hydrological connections between the subject site and the designated sites via the surface water drainage route and the public foul network that were not considered in the screening document.

### Consideration of Impacts

- 8.5. The site is not located within or adjacent to any European Site so there is no risk of habitat loss, fragmentation, or any other direct impact.
- 8.6. Any potential indirect impacts on European Sites from the development would be restricted to the discharge of surface or foul water from the site. Construction works generate fine sediment and may result in accidental spills of oil or other toxic chemicals that may enter the surface water system. However, while sediment can be detrimental to the ecological quality in rivers, the same is not the case for estuaries and tidally influenced habitats, which rely on vast quantities of sediment for their functioning. During the construction phase, pollution control measures would be put in place as standard practice for development projects of this nature. Such measures are not considered mitigation for the purpose of appropriate assessment. In the event of a grant of planning permission, a Construction and Environmental Management Plan (CEMP) should be submitted for agreement with the planning authority prior to the commencement of any works.
- 8.7. During the operational phase, surface / rainwater from the proposed development, up to a 1 in 100-year rainfall event + 20% climate change is to be discharged to ground within the site via a combination of permeable paving, bioretention swales and infiltration trenches. No formal discharge is proposed from the site; however, a high-level overflow is to be provided as an emergency outlet to prevent flooding on the site for events in excess of a 100-year rainfall event +20% climate change. Information provided in the grounds of appeal confirm that the overflow will discharge to an existing culvert on Old Road which in turn discharges to a watercourse and ultimately to the Rogerstown Estuary at the junction of Channel Road/ shore Road, c1km to the southeast. Therefore, a hydrological connection will exist between the subject site and the designated sites in the estuary via the surface water pathway during the operational phase. Consequently, there is potential of surface water containing contaminant or sediment entering the Estuary. This hydrological connection was not considered in the Appropriate Assessment Screening Document submitted with the application. As previously noted, estuaries are not sensitive to sediment input therefore in the eventuality that sediment enter the estuaries via surface water overflow it would be unlikely to have any effect on sensitive habitats or species. Given the nature and scale of the proposed development, the surface water drainage system to be employed on site, the application of standard pollution control

measures, the distance from the European sites, intervening lands uses and the dilution factor, I am satisfied that the potential for likely significant effects on the qualifying interests of Natura 2000 sites in the zone of influence, as a result of surface water deterioration, can be excluded and that this matter does not require further in-depth scientific examination.

- 8.8. The foul discharge from the proposed development would drain via the public sewer to the wastewater treatment plant at Portrane for treatment and ultimately discharge to the Irish Sea. There is potential for an interrupted and distant hydrological connection between the subject site and the designated sites in the Irish Sea due to the wastewater pathway. The subject site is identified for development through the land use policies of the Fingal County Development Plan 2023-2029. This statutory plan was adopted in 2023 and was subject to AA by the planning authority, which concluded that its implementation would not result in significant adverse effects to the integrity of any Natura 2000 areas. I also note the development would not generate significant demands on the existing municipal sewers for foul water. It is my view that the foul discharge from the site would be insignificant in the context of the overall licenced discharge at Portrane WWTP, and thus its impact on the overall discharge would be negligible.

#### Cumulative In-Combination Effect

- 8.9. I am satisfied that the proposed development would have no likely significant effect in combination with other plans and projects on the qualifying features of any European sites. No further assessment is required for the project.

#### AA Screening Conclusion

- 8.10. 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 that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects. It is therefore determined that Appropriate Assessment (stage 2), under Section 177V of the Planning and Development Act 2000, is not required.

This conclusion is based on:

- Objective information presented in the Screening Report

- The nature, scale and location of the project
- Distance from European Sites, intervening land uses and the dilution effect.
- Standard best practice construction methods and pollution controls that would be employed regardless of proximity to a European site and effectiveness of same

No measures intended to avoid or reduce harmful effects on European sites were taken into account in reaching this conclusion.

## 9.0 Recommendation

I recommend that planning permission be refused.

In making my decision I had regard to the alternative design options submitted with the appeal but considered that they failed to adequately address the concerns raised in the assessment in respect of the impact of the proposed development on the visual amenities and character of the area and the failure of the development to provide for an adequate level of residential amenity for future occupants of the scheme.

## 10.0 Reasons and Considerations

1. Having regard to the objectives of the current development plan for the area which in respect of residential development seeks to ensure high quality design and integration with the character of the surrounding area and having regard to the location of the proposed development on a prominent site at the main entrance point to Rush from the west it is considered that, by reason of the siting, orientation and design of proposed Duplex Blocks C, D, E and F and the proposed treatment of the southern site boundary, the proposed development would result in an inactive streetscape along Whitestown Road, would militate against an attractive pedestrian environment, would be of insufficient architectural quality on a prominent site and would seriously injure the visual amenities of the area. The proposed development would, therefore,



conflict with the objectives of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the zoning of the site as set out in the Fingal Development Plan 2023-2029, the objective of which is to provide *for residential development and protect and improve residential amenity* and Policy SPQHP35 which in respect of 'Quality of Residential Development' seeks, inter alia, *to ensure high-quality living environments for all residents in terms of the standard of individual dwelling units and the overall layout and appearance of developments*, it is considered that, by reason of its inadequate qualitative provision of public and private open space, the lack of dedicated communal open space, the failure to maximise daylight provision for apartments, the internal layout which is dominated by hard surfaced areas and inadequate parking provision, the proposed development fails to provide an adequate level of residential amenity for future occupants. The proposed development would, therefore, conflict with the zoning objective and the policies of the development plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

*I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.*

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Lucy Roche  
Planning Inspector

17<sup>th</sup> June 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP316316-23		
<b>Proposed Development Summary</b>	Construction of a residential development consisting of 37 residential units and all associated ancillary works		
<b>Development Address</b>	Lands to the north of Whitestown Road and to the south of Old Road, Rush, Co. Dublin		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	<b>X</b>
		<b>No</b>	No further action required
<b>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?</b>			
<b>Yes</b>		Class.....	EIA Mandatory EIAR required
<b>No</b>	<b>X</b>		Proceed to Q.3
<b>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]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
		N/A	<b>Conclusion</b>
<b>No</b>			No EIAR or Preliminary Examination required
<b>Yes</b>	<b>X</b>	10 (b)(i): Construction of more than 500 dwelling units	Proceed to Q.4

		10 (b)(iv): Urban Development which would involve an area greater than 2 hectares in the case of a business district, 10 hectares in the case of other parts of a built-up area and 20 hectares elsewhere.		
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<b>4. Has Schedule 7A information been submitted?</b>		
<b>No</b>	<b>X</b>	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

**Inspector:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## Appendix 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	316316-23	
<b>Development Summary</b>	Construction of a residential development consisting of 37 residential units and all associated ancillary works	
<b>Examination</b>		
		<b>Yes / No / Uncertain</b>
1. Is the size or nature of the proposed development exceptional in the context of the existing environment?		No
2. Will the development result in the production of any significant waste, or result in significant emissions or pollutants?		No
3. Is the proposed development located on, in, adjoining or have the potential to impact on an ecologically sensitive site or location*?		No
4. Does the proposed development have the potential to affect other significant environmental sensitivities in the area?		No
<b>Comment (if relevant)</b>		
<b>Conclusion</b>		
<b>Based on a preliminary examination of the nature, size or location of the development, is there a real likelihood of significant effects on the environment **?</b>		
There is no real likelihood of significant effects on the environment	EIAR not required	X
There is significant and realistic doubt in regard to the likelihood of significant effects on the environment	Screening Determination required	
	Sch 7A information submitted?	
There is a real likelihood of significant effects on the environment	EIAR is required (Issue notification)	

**Inspector** \_\_\_\_\_ **Date:** \_\_\_\_\_

**DP/ADP** \_\_\_\_\_ **Date:** \_\_\_\_\_

(only where EIAR/ Schedule 7A information is being sought)