



An
Bord
Pleanála

Inspector's Report

ABP-317316-23

Development	Demolition of bungalow and domestic garage and the construction of 6 two-storey dwellings and associated works
Location	Stoneview, The Green, Quickpenny Road, Lusk, County Dublin, K45 DW32
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0472
Applicant(s)	Anne Hennessy
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party v Refusal Decision
Appellant(s)	Anne Hennessy
Observer(s)	None
Date of Site Inspection	09/05/2024
Inspector	Paula Hanlon

1.0 Site Location and Description

- 1.1. The site (0.4559ha) is located along the northern side of Quickpenny Road (a local road), within a predominantly residential area in the NW peripheral area of Lusk. Development in the immediate area comprises a mix of development patterns, house types & forms of varying architectural styles and periods. Existing development which front onto Quickpenny Road within the immediate area is comprised of predominantly detached houses. An established steelworks premises and a standalone detached dormer dwelling house sited at its NE boundary lies on adjacent lands (east) and a single storey dwelling with 1½ storey dwelling house setback to its rear lies on adjoining lands (west). Regles Court, a residential scheme comprising 10(no) two-storey dwellings lies almost immediately opposite this site, on the southern side of Quickpenny Road. Lands to the rear (north) of the site are in agricultural use.
- 1.2. The site itself is broadly rectangular in shape and extends in a north-south direction, with approximately 34m of road frontage along its southern boundary onto Quickpenny Road. An existing (c.1970s) bungalow and associated domestic garage is sited within the front portion of the delineated site and the site extends beyond the established dwelling's rear boundary which is comprised of a wooden fence and planting, encompassing an additional long and narrow undeveloped tract of land. The building line is varied along Quickpenny Road and the footprint of the established dwelling on this site is setback approximately 18m from the adjoining public footpath with front garden laid in grass. A low rendered and capped wall with mature tree planting on its inner face forms the front boundary to the site. The topography of the site's frontage and associated footprint of the established bungalow is higher than the adjoining road level, however site levels fall gradually downwards in a northerly direction, with more than a 4-metre fall between the delineated site's frontage and rear of site.
- 1.3. The site is connected via an established footpath with the centre of Lusk.
- 1.4. The southern portion of the site with existing footprint of dwelling house and garage is within Lusk ACA, whilst the northern, undeveloped area of the site lies outside of the ACA.

2.0 Proposed Development

The demolition of an existing bungalow (184m²) and domestic garage and the construction of a housing scheme comprising 6(no.) detached dwellings, vehicular access road along the site's eastern boundary and associated works (incl. substation (6.72m² and 3.3m height) located east of vehicular access as follows:

- House 1 - Dormer (4-bed) 215m² and overall height (8.97m)
- House(s) 2,3,4 - Two storey (3-bed) 114m² and overall height (7.42m)
- House(s) 5,6 - Two storey (4-bed) 139m² and overall height (8.57m).

2.1. The application was accompanied by the following documentation of note –

- Landscaping Masterplan
- Engineering Assessment Report.

3.0 Planning Authority Decision

3.1. Further Information

On 27 October 2022, the PA in its consideration that the proposed development constituted overdevelopment on a constrained site and would negatively impact on the character of the ACA, sought that further information be submitted to address these issues by way of revised design proposals. Other details in respect of road safety, drainage and Part V were also sought.

3.2. Decision

By Order dated 18 May 2023, Fingal County Council (LCC) issued a Notification of decision to refuse planning permission for 3 reasons. The stated reasons pertain to the following:

(1) Overdevelopment [proximity to ACA, inadequate open space, impact on adjacent residential amenity by way of overlooking, dominance & overbearance and materially contravenes policy objectives DMSO19 & DMSO23]

(2) Negative impact on the character of Lusk ACA, contrary to HCAP14 and CSP38.

(3) Traffic hazard.

3.3. Planning Authority Reports

- Planning Reports

Two Planning Reports are attached to the file.

The first planning report (dated 27/10/2022) recommended that further information be sought on a number of matters (as summarised in Section 3.1 above).

A final Planning Report (dated 16/05/23) forms the basis for the decision by FCC to refuse permission. In making its recommendation to refuse permission, the Planner's Report outlined that no additional details were provided by the applicant in response to further information point 1 (Design & Layout), point 3 (quantum of open space) and point 5 (Part V) sought by the PA, and that insufficient details were submitted in response to point 2 (roads & transport). It concluded that the proposal constituted overdevelopment and referenced the site's linear configuration, proximity to the ACA, separation distances & inadequate open space provision, undue visual & residential impacts and that transport and access issues were not fully addressed. The stated reasons for refusal provided in the Planner's Report are reflected in the PA's decision to refuse permission.

- Other Technical Reports

Water Services Section (11/10/2022): Conditions Recommended.

Transportation Planning Section (11/05/2023): No objection subject to conditions.

Park & Green Infrastructure Section (23/09/2022): Further details required on quantum of public open space. Landscaping and boundary treatment is acceptable subject to conditions.

Conservation Officer (08/05/2023): Amendments sought at further information stage were not received.

[Advisory: I note that the Planning Officer's report refers to an internal report from the Council's Housing Section which outlines that Part V applies, however a record of this report is not contained within the documentation made available in this appeal].

3.4. **Prescribed Bodies**

DHHLG (Archaeology): No objection, subject to conditions.

Irish Water: No Objection, subject to conditions.

3.5. **Third Party Observations**

None received.

4.0 **Planning History**

Subject Lands

F18A/0666: Similar proposal in regard to design and layout for 6(no) dwellings on this site (following receipt of further information) was refused on 3 technical engineering grounds including sightlines and on-site drainage matters (soakaway design & location arrangements of pumping station & gravity sewer) (2019).

F96B/0368: Permission granted for alterations and extension to dwelling (1996).

Adjacent Lands

F15A/0500: 1½ storey dwelling granted to rear of adjacent bungalow (west) (2015).

F00A/1262: Dormer dwelling refused on a backland site to rear of adjacent dormer setback within adjacent site (east) (2000).

F99B/0534 & F99B/0199: Extensions granted to existing dwelling located along Quickpenny Road, (east).

5.0 Policy Context

5.1. Fingal Development Plan 2023-2029 (FDP)

- 5.1.1. The FDP which came into effect 5 April 2023 is the operative Development Plan.
- 5.1.2. These lands are within an area zoned 'RS' - Residential, with its objective 'to provide for residential development and protect and improve residential amenity'.
Residential use is 'permitted in principle' on lands zoned 'RS'.
- 5.1.3. Lusk is designated as a Self-Sustaining Town. The Core Strategy provides an estimated population for Lusk of 8,771 in 2023 and 9,326 (growth +555) for 2029. The projected housing demand is stated at 300 units, with 27ha of available residential zoned land with a potential yield of 818 units available over the plan period (extant permissions provide for 132 units) [Table 2.14].
- 5.1.4. It is an objective to prepare a Framework Plan for Lusk over the lifetime of the CDP.
- 5.1.5. The site is located within an area designated 'Low Lying Character Type' and characterised as having a modest value with low landscape sensitivity.
- 5.1.6. There are no designations with respect to ecology or archaeology attached to the site.
- 5.1.7. Council's policy and objectives that are relevant to the consideration of this appeal include:

Self-Sustaining Towns

Policy CSP34 - Consolidate Growth by encouraging infill development and compact growth rather than greenfield development and by intensification at appropriately identified locations.

Policy CSP38 - Consolidate development and protect the unique identities of settlements (including Lusk).

Private Open Space

Objective DMSO27 (Minimum Private Open Space Provision 3-bed requires 60m² (minimum) and 4-bed requires 75m² minimum).

Public Open Space

Objective DMSO52 & Table 14.12, provide that the relevant recommended quantitative standard for public open space in this case is 12% of site area (being residential development on infill/brownfield sites).

Objectives DMSO53 & DMSO57 (Provides for monetary value in lieu of open spaces in accordance with DCS).

Objective DMSO53 (...Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space).

Objective DMSO56 (Ensure every home within a new residential scheme is within 150 metres walking distance of a park).

Residential Amenity

Daylight and Sunlight (Section 14.6.6.1); Separation Distances (Section 14.6.6.3); Overlooking and Overbearance (Section 14.6.6.4) and Building Lines (Section 14.4.8).

Objective DMSO23 (A minimum of 22m between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy).

Other Residential

Objective DMSO19 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, Sustainable Urban Housing: Design Standards for New Apartments 2020.

Objective DMSO5 (Requirement for a Design Statement for 5+ unit developments).

Objective DMSO29 (Naming of Streets and Residential Estates).

Objective CSO61 (Retain the traditional hedgerow boundary treatment characteristic of Lusk).

Architectural Conservation Area

Policy HCAP14 Protect the special interest and character of all areas which have been designated as an Architectural Conservation Area (ACA). Development within or affecting an ACA must contribute positively to its character and distinctiveness and take opportunities to protect and enhance the character and appearance of the area and it's setting wherever possible. Development shall not harm buildings, spaces, original street patterns, archaeological sites, historic boundaries or features, which contribute positively to the ACA.

Objective CSO59 (Protect and conserve the special character of the historic core of Lusk...).

Objective DMSO187 (& Table 14.24) (Design approach to development within an ACA).

Roads and Transport

Objective DMSO118 (Promote Road Safety Measures).

Table 14.18: Zone 2: Maximum 2 car spaces per dwelling and 1 visitor space per 5 units in the case of a 3+ bed house.

Chapters of Relevance within the plan include:

Chapter 3 (Sustainable Placemaking & Quality Homes); Chapter 4 (Community Infrastructure and Open Space); Chapter 5 (Climate Action); Chapter 6 (Connectivity and Movement) and Chapter 14 (Development Management Standards).

5.2. **Regional Spatial and Economic Strategy for Eastern & Midland Region (RSES)**

The RSES supports continued population and economic growth in Dublin City and suburbs, with high quality new housing promoted and a focus on the role of good urban design, brownfield redevelopment and urban renewal and regeneration. A key National Strategic Outcome (NSO 1) in the NPF and Regional Strategic Outcome (RSO 2) in the RSES is the need to achieve ambitious targets for compact growth in our urban areas.

5.3. **Project Ireland 2040 National Planning Framework (NPF)**

The overarching policy objective of the NPF is to renew and develop existing settlements rather than the continual sprawl of cities and towns out into the countryside. The NPF sets a target of at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns, and villages on infill and/or brownfield sites.

5.4. **National Planning Guidelines**

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

- Sustainable Residential Development and Compact Settlement Guidelines for PA's (2024).
- Design Manual for Urban Roads and Streets (2013) (updated).

5.5. **Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities' (2024)**

The site is within a 'City-Suburban' area as defined within Table 3.1 of these Guidelines. The guidelines set out that suburban areas are the lower density, car-orientated residential suburbs constructed at the edge of cities in the latter half of the

20th and early 21st century. It is a policy and objective of these Guidelines that residential densities in the range 40 dph to 80 dph (net) shall generally be applied.

SPPR 2 - Minimum Private Open Space Standards for Houses

Proposals for new houses to meet the following minimum private open space standards: 3 bed house 40m² and 4 bed house 50m².

Policy and Objective 5.1 [Public Open Space]

The requirement in the development plan shall be for public open space provision of not less than a minimum of 10% of net site area and not more than 15% of net site area except in exceptional circumstances and the PA may seek a financial contribution in lieu of provision.

SPPR 3 - Car Parking

(iii) In intermediate and peripheral locations, defined in Chapter 3 (Table 3.8) the maximum rate of car parking provision for residential development, where justified is 2(no.) spaces per dwelling.

Policy and Objective 4.1 [DMURS]

That PA's implement the principles, approaches and standards set out in DMURS (including updates) in carrying out their functions under the PDA (as amended) and as part of an integrated approach to quality urban design and placemaking.

Policy and Objective 4.1

That PA's implement the principles, approaches and standards set out in DMURS (including updates) in carrying out their functions under the PDA (as amended) and as part of an integrated approach to quality urban design and placemaking.

5.6. Natural Heritage Designations

The site is not located on any designated Natura 2000 site(s), with the nearest Natura 2000 sites being Rogerstown Estuary SAC (000208) and Rogerstown Estuary SPA

(004015) (also designated pNHA 000208), located approximately 3km SE at its closest point to this development.

5.7. 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, or an EIA determination therefore is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A First Party appeal has been prepared and submitted on behalf of the Applicant (Ms. Anne Hennessy). The appeal statement details that there are inconsistencies in the PA's decision making on the proposed development, given that the grounds for refusal in this case differ from the grounds of refusal previously provided in a similar planning history case attached to the site in 2019. A summary of the grounds of appeal is provided below.

- Principle of Development

The grounds for refusal differ from a previous decision on this site (Pl. Ref. F18A/0666). The PA accepts the site's suitability for residential development and the principle of the proposal in terms of zoning, demolition works, accommodation standards (internal & external), wastewater, drainage, archaeology and that it accords with Council's objective in encouraging the development of underutilised and backland sites (PL44). It is stated that the proposed development, located within a serviced and built-up area accords with the adjacent pattern and landuse of development.

- Character of ACA

The affect of the proposed development on Lusk ACA is refuted for a number of reasons, notably, that this ACA encompasses an unduly large extent of area with a lack of cohesion or uniformity, only a portion of the subject site is contained within the

ACA boundary, no buildings of heritage value are/were attached to the site and to adjoining tract to east, existing development in its vicinity is relatively modern and 'higgledy-piggledy' and that this matter was not previously raised in the site's planning history. Furthermore, the PA has not precisely detailed the actual affect of the proposal on the historic attributes of the area and the Conservation Officer's report regarding the impact of proposed House 1 on the character of the ACA is contradictory to the CDP which accepts that variations in building styles and forms comprise a key characteristic of this ACA, with the CDP itself acknowledging the 'considerable diversity of building types and materials' in this ACA and endorses the 'intermingling in the streetscape of vernacular buildings with taller houses'.

- Residential Amenities

Open Space: The matter of quantum of open space provision was not previously raised in a similar planning history case on this site, the PA's planning report is not critical of the amenity area proposed and does not reference the extent of the shortfall and departure from the requirement of a financial contribution to address the shortfall.

House Types: The requirement for single storey dwellings to the rear of House 1 is unclear, no third-party objections were submitted, and this matter was not previously raised in a previous decision on this site.

Density: The planning officer's consideration that density proposed is excessive (13pha), is at odds with the CDP which seeks to support the consolidation and re-intensification of infill/brownfield sites to promote high density within the existing built-up area and envisages the better use of underutilised serviced land (Refer policy CSP14).

Overlooking: The PA's analysis on overlooking is focused on the site's northern area. Inter-allotment overlooking is a characteristic of most residential units, ground floor windows and bathrooms generally don't give rise to overlooking and reference is made to the use of bedroom space and likely impacts on neighbouring gardens in broad terms. The appellant requests that the Board adopt the approach that all bathroom/ensuite windows be obscurely glazed and attic space floored to provide additional storage space.

- Development Potential

The PA's first reason for refusal with regard to potential prejudices on the potential for development of adjacent land is not explained and unwarranted. A commercial yard (east) and two houses (west) including a recently permitted dwelling (F15A/0500) are established on adjacent lands.

- Traffic Safety

The PA's refusal reason on traffic safety is inconsistent with the internal Transportation Section report which stated no objection following receipt of additional information at further information stage of the application process. Any outstanding matters (including taking in charge, boundary treatment and pedestrian arrangements) can be addressed by condition.

6.2. Planning Authority Response

A response was received from the PA dated 07/07/2023. It references that the applicant was afforded an opportunity to address matters raised by the PA and that a partial response was provided. The proposal does not accord with the policies and objectives of the CDP. The PA requests that its decision to refuse be upheld, with reference made to development contribution and bond requirements should permission be granted.

7.0 Assessment

The site, located within Lusk (a Self-Sustaining Town) is zoned 'RS' – Residential within the current CDP, with its objective '*to provide for residential development and protect and improve residential amenity*'. I am therefore satisfied that the principle of residential development on this site is acceptable, subject to compliance with normal planning considerations, to be assessed below.

Having examined the application details and all other documentation on file, including the First party submission received, the report of the PA, having inspected the site, and having regard to relevant local and national policy, objectives, guideline and standards, I consider that the substantive issues in this appeal to be considered are as follows:

- Design and Layout

- Public Open Space Provision
- Character of ACA
- Road and Transport
- Other Matters
- Material Contravention.

7.1. Design & Layout

Overview

In my view, the proposed development constitutes 'infill' residential development on an underutilised and constrained site within the built area of Lusk. In the outset, having examined the planning history attached to the site and as stated in the grounds of appeal, I wish highlight to the Board that the 6(no) houses proposed largely replicate a similar such proposal on this site, which was submitted in response to a request for further information under planning reference F18A/0666 and that the PA's grounds for refusal in 2019 are at variance to the grounds for refusal in this appeal case. I note also that no third-party submission/observation was received.

Having examined the PA's reasons for refusal and the first party appeal submission, I consider that the key issue that needs to be ascertained in this case is whether the proposed development on this specific site will integrate successfully with its surroundings in terms of the character of the area and the reasonable protection of the amenities of established residential property which adjoins this site, whilst addressing the need to provide additional residential development and promote compact growth at this location.

7.1.1. Site Context

Whilst the general pattern of development in the immediate area comprises predominantly low rise, low density residential development on single plots in linear form along Quickpenny Road (apart from Regles Court to the south), I note that a deviation in this linear pattern occurs in respect of established lands which immediately adjoin this site (east and west). In my opinion, the established configuration of lands to the east of this site are pertinent to the assessment of this case. These adjoining

lands (east) comprise a large surfaced open area which is utilised as a shared vehicular access to a manufacturing operation (Express Steelworks) that fronts onto its eastern lateral boundary within the site, and a standalone dormer dwelling which is setback approximately 70m from the roadside and fronts onto the northern boundary (rear) of this open surfaced area. I noted on the date of inspection that an existing wooden post and rail fence forms the lateral boundary between the site and these adjoining lands, with an established concrete footpath and on-site car parking arrangements in place (not formally demarcated on the ground) in-situ along this shared boundary insofar as it lies adjacent to House 1 plot (proposed).

In terms of adjoining lands to west, it is relevant to note that two dwellings lie adjacent to the appeal site's western boundary, notably an established bungalow (sited along the roadside) and a 1½ storey dwelling setback approximately 105 metres from Quickpenny Road (permitted in 2015).

Whilst the planning officer in their request for further information sought a reduction in the number of units proposed, I note that the overall layout and orientation of dwellings was generally accepted and that it was similarly accepted under a previous application on this site (PI. Ref. F18/A0666). Given the site's context and its relationship with adjacent development, I concur with the PA that the siting and orientation of House 1 which is similar to the established building line currently on this site and House 2, 3 and 4 with setback of approximately 12m from the adjoining eastern boundary is satisfactory and will provide for consolidated development on this underutilised site. Furthermore, whilst the footprint of an established dwelling setback on adjoining lands (west) is sited approximately 15 metres forward of the proposed building line to House 5 & 6, I am of the view that the proposal in principle provides for an efficient use of a constrained infill site which is zoned and serviced.

7.1.2. Overdevelopment

I note that the planning officer in their Planning Report expressed concerns that the density proposed is excessive due to the linear nature of the site, proximity to an ACA and separation distances to boundaries. I also note that the PA in its reason for refusal did not explicitly refer to density but outlined that the proposal constituted overdevelopment of this restricted site on similar grounds, with a further associated

issue in regard to inadequate open space provision. In my opinion, these matters of concern should not be expressively stated under the matter of density, but rather in regard to siting and design proposed and the ability of the proposal to integrate successfully into its surroundings. It is adopted policy to consolidate growth by encouraging infill development and compact growth at appropriately identified locations (Policy CSP34). Furthermore, given the site's suburban location and in applying the Compact Guidelines (2024), I note that a density in the range of 40dph to 80 dph (net) is to be generally applied. In this context, whilst the density proposed at 13 per hectare is considerably lower than the density range to be generally applied as set out within national guidelines, I am satisfied that it is appropriate in this case due to its suburban location, site configuration (being a long and narrow infill site) and the pattern of development which lies immediately adjacent to this site. Accordingly, I am satisfied that the proposal is consistent with adopted policy on compact growth.

7.1.3. House Design

The PA in its initial assessment of this application dated 27 October 2022, considered that the scale, separation distances and two-storey form of the housing units proposed was unsatisfactory and sought that revised plans be submitted which provide for a reduction in the number of units and single storey form only apart from House 1. I note that the applicant did not address the design matters raised, with no response provided to the PA's request for further information. Whilst it is an objective of the plan to require a Design Statement for the development of 5 or more houses, I note that a Design Statement did not accompany this application (objective DMSO5).

In my view, the principle of two-storey dwellings on this site is generally acceptable, subject to no negative impacts on the amenities of adjoining lands (including overbearance and overlooking), which I will discuss below.

In examining the documentation submitted and having inspected the site, I consider that the proposed 6(no) dwellings would contribute towards the consolidation of development on a zoned and serviced infill site, with appropriate separation distances, car parking provision, adequate internal circulation within the site and adequate room sizes within the dwellings. I am satisfied in principle with the design approach to unit numbers 2 to 6. However, I concur with the Planning Authority in respect of House 1

and consider that it is unsatisfactory in terms of its overall design approach, fenestration, roof profile and material finish and would negatively impact on the streetscape and visual amenities of the area, if permitted. Notwithstanding, in my view, this matter which is solely premised on design should not warrant a refusal in itself. I therefore suggest that a condition be attached in the event that the Board is minded to grant permission which requires that House 1 be omitted entirely. The future development of this plot would therefore be subject to a separate planning application which allows for further consideration and an appropriate design solution incorporating dual aspect (east & south elevations), being a corner site, prominently facing onto both Quickpenny Road and the proposed access road into this housing scheme and which responds positively to the scale, form and character of existing development along Quickpenny Road and which will not detract from the character of the ACA.

7.1.4. Overbearance

The PA in its reason for refusal raised concerns with regard to dominance and overbearance on the amenities of adjoining residential properties and the future development potential of adjoining sites, due to the layout and siting of the proposed dwellings. I have examined the site layout and elevation plans submitted with this application. The proposed development comprises 2-storey dwellings which range between 7.42m and 8.87m in overall height, and massing which reflects its residential form. The site's levels fall gradually downwards in a northerly direction, with more than a 4-metre fall between the site's frontage and rear of site. In my opinion, the variance in ground levels is not so significant, that it would not give rise to negative impacts on residential amenities of adjoining properties.

Furthermore, given the overall layout, orientation and separation distances between the proposed houses and the site's boundary, I am satisfied that adjoining houses will not incur undue loss of amenities due to overbearance. Notably, there is a separation distance in excess of 8m between the rear elevation of proposed House 2, 3 and 4 and the site's western boundary which adjoins the amenity area to adjoining dwellings. A 3m (approx.) separation distance is provided between the side gable of House 1 and the western boundary, which is similar to the existing separation distance provided with the existing bungalow on the appeal site. In terms of House 5, a separation

distance of 4.7m (approx.) exists between its gable end and the site's western boundary and a distance of 15m (approx.) will be provided between the footprint of House 5 and the established dwelling sited on lands to the west of this site. Finally, in my view, the proposed design and layout on this infill site is in response to established development on adjacent lands to the east and west and will not impact on the potential future development potential of adjoining sites, should it be desirable or necessary in the future.

7.1.5. Overlooking

I note that the matter of overlooking was also raised by the PA in its reasons for refusal. I have considered the proposed site context, including house design(s), boundary treatment, siting and orientation. In terms of the western boundary, I note that the depth of private gardens to rear of Houses 2,3 and 4 are in excess of 8m and that the design approach is such that no windows are proposed at first floor level on the western (rear) elevations save for 2 window opens which serve a landing space and bathroom. The submitted drawings indicate that these windows will be fitted with frosted glass. In terms of the eastern boundary, whilst I note that House 2 and 3 directly face an existing dormer dwelling, I am of the view that the proposal will not give rise to overlooking due to separation distance provided (approx. 22m) and that the design approach of existing dormer dwelling comprises rooflights only above ground floor level. Finally, in term of House 5, I consider that on the basis of the angle of opposition, the degree of overlooking arising from this house onto existing dwelling (Green Hollow) to the west is not so significant as to present an undue loss of amenity to adjoining dwelling by virtue of overlooking.

Overall, I can appreciate the perception of overlooking given the site's configuration and pattern of development which immediately adjoins this site, however there are no directly opposing windows at first floor level and the proposal has sought to prevent overlooking of private gardens through its placement of fenestration. Furthermore, I consider that the use of frosted glazing to window serving bedroom 3 in House 2,3,4 is not necessarily required in this instance, as the positioning and orientation of this window at first floor level on eastern side gable presents no overlooking issue(s) in terms of the houses proposed and adjacent residences. I suggest that a condition be

attached which allows for the omission of frosted glazing to these bedrooms, should the Board be minded to grant permission for this development. In light of the above, having considered the siting, orientation and design approach and subject to condition on boundary treatment, I would not share the concerns of the Planning PA and I am satisfied that the proposed development would not give rise to overlooking and is consistent with Section 14.6.6.4 of the CDP.

7.2. Provision of Open Space

The PA included the matter of inadequate open space in its reasons for refusal. In examining the site layout map submitted, I am satisfied that private open space provisions are acceptable on this infill site, with all private rear gardens exceeding 8m in depth and meeting the minimum standard set out within SPPR2 of the Compact Guidelines (i.e. 3 bed house 40m² and 4 bed house 50m²) and the minimum standard outlined within objective DMSO27 of the CDP (i.e. 60m² and 75m² minimum respectively for 3-bed and 4-bed houses).

In regard to public open space provision, the stated quantitative standard for public open space in the case of infill residential development as set out within the CDP is 12% of site area (objective DMSO52 & Table 14.12), however the plan provides for flexibility where this standard cannot be reasonably achieved (objectives DMSO53 & DMSO57). In this context, I note that no usable public open space area is proposed within this infill site and that this issue was previously accepted by the PA, subject to the payment of a financial contribution in lieu of the shortfall. I also note that both Fingal's adopted Development Contribution Scheme and County Development Plan provides for this, with the acceptance of a financial contribution in lieu of public open space requirement to allow provision for the acquisition of additional open space or the upgrade of existing parks and open spaces subject to these additional facilities meeting the standards specified in Table 14.11 of the CDP. Furthermore, it is relevant to note that policy and objective 5.1 of the Compact Guidelines (2024) provide for a deviation in meeting the minimum standard (being not less than 10% of net site area in exceptional circumstances and that a financial contribution may be sought in lieu of provision. In this regard, it is my view that the provision of usable public open space within this scheme is unfeasible, due to the site's constraints, comprised of a long and

narrow linear form. I consider that a flexible approach is necessary and warranted in this instance and again, I would refer the Board to policy and objectives contained in the current CDP, RSES and NPF which seek to provide more compact development within built up urban areas. Furthermore, in my opinion, the inclusion of a proposed homezone area serving only modest traffic levels that would enter/exit this scheme, may be conducive to use as a hard surfaced amenity area for future residents. In this instance, the omission of public open space which provides for consolidated growth is therefore in my opinion acceptable, subject to a financial contribution in lieu of open space, to be addressed by way of condition, as is consistent with objectives DMSO53 & DMSO57 of the CDP and policy and objective 5.1 of the Compact Guidelines (2024).

7.3. Character of ACA

The front portion of the appeal site (i.e., existing bungalow and garage) is contained within the boundary of Lusk ACA. The PA in its refusal outlined that the proposed development would negatively impact on the character of the ACA and would be contrary to policy objectives HCAP14 and CSP38 of the CDP. Firstly, it is important to note that the designation of an ACA should not prejudice innovative and contemporary design which does not detract from the character of the area. It is a stated objective of the CDP that new build proposals follow a sensitive design approach that respects the established character of the ACA in terms of the scale, massing, bulk, plot sizes, proportions and materials of adjoining buildings (Objective DMSO187). In this regard, I am satisfied that the demolition of an existing 1970s bungalow on this site is acceptable and note that its demolition is not disputed by any party (including the PA).

Secondly, whilst I acknowledge that there is no architectural or heritage value attached to the appeal site, the varying design forms in the immediate area and that the CDP outlines that the special character of Lusk ACA is formed by several inter-related elements and refers specifically to the historic core, vernacular houses and that considerable diversity of building types and materials contribute to the character of the ACA, I have concerns regarding the appropriateness of proposed House 1 at this location. In my opinion, the design approach on House 1 (as discussed in Section 7.1.3 above) is not satisfactory and requires a revised sensitive design solution so as

to ensure that the integrity and character of the streetscape is not compromised, if permitted. I therefore concur with the Conservation Officer's report in regard to House 1, however as previously stated, it is my view that this house be omitted in the event that permission be granted for the proposed development. Furthermore, I consider that Houses 2-6 will not detract from the character of the area, given their siting, setback from the public road, site levels and the established pattern of development which surrounds the site. On this basis, I consider that the provision of 6(no) houses would on balance, hold more advantages in terms of increasing housing stock, consolidating growth and providing compact growth in this area and that outstanding matters regarding visual impact on the streetscape and character of the ACA can be appropriately addressed by condition, in the event that permission is granted.

7.4. Roads and Transport

I note that an internal report from the Transport Section has no objection to the proposed development, subject to conditions, however the PA in its reasons for refusal are not satisfied that the applicant has adequately considered transport issues and pedestrian access. In examining the documentation submitted, I am of the view that the outstanding matters relate to points of detail in regard to the inclusion of an improved pedestrian crossing across the proposed vehicular access which is to NTA guidance and DMURS Standards, and that road surfacing proposal accords with the Council's Taking in Charge policy. I am satisfied that these matters do not warrant grounds for refusal in themselves and in my opinion, can be satisfactorily addressed by way of condition, should the Board be minded to grant permission.

I further note that no issue was raised by the PA on the matter of achievable sightlines, with the Transportation Planning Section satisfied based on a site visit and details submitted on a sightline drawing that required sightlines can be achieved.

7.5. Other Matters

Section 3.3. of this report notes a reported Housing Report to be unavailable, however I consider that this is not material to my assessment of the appeal in this case. The

matter of Part V remains outstanding and can be addressed by condition in the event of permission. I also note that the proposed development would be subject to a standard S.48 Development Contribution (and in lieu of public open space shortfall which is provided for under the current scheme).

7.6. Material Contravention

A matter is raised in the PA's decision to refuse permission which relates to material contravention. Having considered the proposed development and the relevant provisions of the Fingal County Development Plan 2023-2029, in my opinion the Board should not consider itself restrained by section 37(2), having regard to the analysis set out.

The PA in its refusal reason (1) puts forward that the proposal will materially contravene Objective DMSO19 with regard to new residential development design and floor area requirements & Objective DMSO23 with regard to separation distances.

Having examined the plans and particulars submitted in the context of Objective DMSO19 and Objective DMSO23, I have concluded that the proposed development does not constitute a material contravention for the following reasons:

Objective DMSO19 requires that applications for residential developments comply with all design and floor area requirements set out in statutory guidelines which are no longer relevant (i.e., Quality Housing for Sustainable Communities (2007) Guidelines, Sustainable Residential Development in Urban Areas (2009) Guidelines and the companion Urban Design Manual (2009), having been replaced by the recently adopted Compact Settlement Guidelines (2024). Whilst I note that the Planning Report of the PA makes no explicit reference to the manner in which the proposal is not consistent with the statutory guidelines stated within objective DMSO19 of the CDP, I am satisfied that the proposed development is consistent with the design and floor area requirements stated in the Compact Settlement Guidelines (2024), being the relevant guidelines in this case. Furthermore, Objective DMSO23 requires that a minimum of 22m between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. As stated in Section 7.1.5 of this report, there are no directly opposing windows at first floor level

and the proposal has sought to prevent overlooking of private gardens through its placement of fenestration. I am therefore satisfied that the proposed development will not give rise to overlooking and does not materially contravene DMSO23 of the CDP.

I wish to further highlight that having regard to Section 37 (2) of the Planning and Development Act 2000 (as amended), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the PA to whose decision the appeal relates, having assessed the proposal in accordance with the following criteria:

- i. the proposed development is of strategic or national importance:

The development of 6 houses is not considered to be of strategic or national importance.

- ii. there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned:

There are no conflicting objectives in the development plan and the objectives are clearly stated, insofar as the proposed development is concerned.

- iii. permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

The proposal, located on lands that are zoned 'RS' Residential is consistent with Section 28 Guidelines, most notably Compact Guidelines (2024) which provides standards for separation distances in regard to directly overlooking windows (16m) (SPPR1) and the allowance of flexibility in open space provision in the case of site constraints or other factors, through seeking a financial contribution (policy and objective 5.1). DMS019 therefore relates to guidelines

which have since been replaced and the proposal complies with the current, relevant S.28 guidelines. Furthermore, DMS023 is not prescriptive and provides for alternative design.

- iv. permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

There is no evidence provided that similar such development has been granted in the immediate area of this site following the adoption and implementation of the CDP.

If the Board consider that the proposed development would materially contravene the plan, the proposed development may be considered under S.37(2)(ii)(iii).

8.0 AA Screening

I have considered the proposed development of the demolition of a bungalow and domestic garage and the construction of 6 two-storey dwellings and associated works in light of the requirements S177U of the Planning and Development Act 2000 as amended. The site is not located on any designated Natura 2000 site(s), with the nearest Natura 2000 sites being Rogerstown Estuary SAC (000208) and Rogerstown Estuary SPA (004015) (also designated pNHA 000208), located approximately 3km

SE at its closest point to this development. The North-West Irish Sea SPA (Site Code: 004236) is located c. 5.8km to the east of the appeal site.

Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:

- The nature of the works and development (incl. demolition of a bungalow and domestic garage and the construction of 6 two-storey dwellings and associated works) are small scale
- The site is located a distance of c.3km from the nearest European site and there are no hydrological or other ecological connections to any European site
- I have taken into account the AA screening determination by the PA which determined that the proposed development is not likely to give rise to adverse impact on the qualifying interests and conservation objectives of any nearby Natura 2000 sites.

I conclude that on the basis of objective information, 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. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

9.0 Recommendation

I recommend that planning permission be granted for the following reasons and considerations.

10.0 Reasons and Considerations

Having regard to the pattern of development in the area and its residential zoning under the Fingal County Development Plan 2023-2029, and to adopted policy and standards for urban consolidation and the development of infill sites (Policy CSP34 and CSP38) and in protecting the special interest and character of an Architectural Conservation Area (Policy HCAP14), it is considered that, subject to compliance with conditions below, the proposed development of 6(no) houses would not seriously injure the character of the area or of the Architectural Conservation Area, or the amenities of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 25 April 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 the 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. House Number 1 shall be omitted and development on this site shall be subject to a separate application for planning permission which has regard to its location, in an area on approach into the settlement of Lusk.

Reason: In the interest of proper planning and sustainable development, visual amenity and the protection of the character of the Architectural Conservation Area.

3. Prior to commencement of development, the internal road layout to be agreed in writing with the Planning Authority. The developer shall also submit revised plans and particulars which include full details on internal road surfacing and improved pedestrian crossing across vehicular access junction, which shall be designed and constructed to the satisfaction of the Planning Authority, with all associated costs borne by the developer.

Reason: In the interest of clarity, traffic safety, to improve permeability and the proper planning and sustainable development of the area.

4. Drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health.

5. The developer shall enter into water and wastewater connection agreement(s) with Uisce Eireann prior to commencement of development.

Reason: In the interest of orderly development.

6. (a) The developer is required to employ a qualified archaeologist to monitor under licence all groundworks associated with the development.

(b) Should archaeological material be found during the course of monitoring, the archaeologist may have work on the site stopped, pending a decision as to how best

to deal with the archaeology. The developer shall be prepared to be advised by the Department of Housing, Local Government and Heritage with regard to any necessary mitigating action (e.g., preservation in situ, or excavation) and should facilitate the archaeologist in recording any material found.

(c) The Planning Authority and the Department of Housing, Local Government and Heritage shall be furnished with a report describing the results of the monitoring.

Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects of archaeological interest.

7. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:

- (a) Location of the site and materials compound(s) including area(s) identified for the storage of construction refuse;
- (b) Details of site security fencing and hoardings;
- (c) Details of on-site car parking facilities for site workers during the course of construction;
- (d) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;
- (e) Details of appropriate mitigation measures for noise, dust and vibration, and monitoring of such levels;
- (f) Containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained;
- (g) Off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil and
- (h) construction hours.

Reason: In the interest of amenities, public health and safety.

8. Public lighting shall be agreed in writing with the planning authority prior to commencement of development. Such lighting shall be provided prior to the making available for occupation of any dwelling hereby permitted.

Reason: In the interests of amenity and public safety.

9. All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development.

Reason: In the interests of visual and residential amenity.

10. (a) The site shall be landscaped in accordance with the landscaping masterplan submitted with this application.

(b) All existing trees and hedging to be retained and proposed new planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

(c) Prior to the commencement of development, notwithstanding details provided with this application, full details of all boundary treatment(s) (including fencing types) shall be submitted for the written approval of the Planning Authority,

Reason: In the interest of clarity, visual amenity and the proper planning and sustainable development of the area.

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

Reason: In the interest of visual amenity.

12. The naming and numbering of the scheme shall be agreed in writing with the planning authority prior to the occupation of the dwellings.

Reason: In the interest of orderly street numbering.

13. All of the in-curtilage car parking spaces shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with this requirement shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

Reason: in the interest of sustainable transportation.

14. a) Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each housing unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all residential units permitted to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.

b) An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.

c) The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in the land regarding the sales and marketing of the specified residential units, in which case the planning authority shall confirm in writing to the developer or any person with an interest in the land, that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.

Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.

15. 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.

16. Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, drains, and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.

Reason: To ensure the satisfactory completion of the development.

17. The developer shall pay to the planning authority a financial contribution in lieu of the public open space requirement in respect of public open space benefiting development in the area of the planning authority that is provided and 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 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 their permission.

18. 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 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 or 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.

Paula Hanlon
Planning Inspector

20 June 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317316-23		
Proposed Development Summary	6 Dwelling Houses		
Development Address	Stoneview, The Green, Quickpenny Road, Lusk, County Dublin, K45 DW32		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? <small>(that is involving construction works, demolition, or interventions in the natural surroundings)</small>	Yes	X	
	No		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No		N/A	
			No EIAR or Preliminary Examination required
Yes	X	Class 10 (Infrastructure Projects)	
			Proceed to Q.4

4. Has Schedule 7A information been submitted?

No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____

Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	317316-23	
Proposed Development Summary	6 Dwelling Houses	
Development Address	Stoneview, The Green, Quickpenny Road, Lusk, County Dublin, K45 DW32	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The site is infill in nature and is located in a built, urban area. The site is zoned RS with residential use permissible. The proposed development is not exceptional in the context of its existing environment.</p> <p>The proposed development will not result in the production of any significant waste, emissions or pollutants.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having</p>	<p>No. The site area is 0.4559 ha.</p> <p>There are no other developments under construction adjoining the site. All other developments are established uses.</p>	No

<p>regard to other existing and/or permitted projects?</p>		
<p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The proposed development is not located on or within proximity to any designated natura 2000 sites or any designated NHA/pNHA. It is on zoned and serviced lands within a built area and there is no hydrological or ecological pathway to any European site. The nearest Natura 2000 sites are Rogerstown Estuary SAC (000208) and Rogerstown Estuary SPA (004015) (also designated NHA 000208), located approximately 3km SE at its closest point to this development.</p> <p>The proposal does not have the potential to significantly affect other significant environmental sensitivities in the area. due to the siting, nature, extent and scope of the proposal on a partially developed site within the built area, with no environmental sensitivities.</p>	<p>No</p>
<p>• Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment. EIA not required.</p>		

Inspector: _____

Date: _____

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)