



An  
Bord  
Pleanála

## Inspector's Report

### ABP-317681-23

#### Development

Demolition of bungalow and garage and the construction of 22 residential units. Vehicular access and separate pedestrian access are proposed along Estuary Road and associated site works.

#### Location

Site at Larch Wood, Estuary Road, Malahide, Co. Dublin, K36 F620

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

F23A/0250

#### Applicant

Garvagh Homes Limited

#### Type of Application

Planning Permission

#### Planning Authority Decision

Refuse Permission

#### Type of Appeal

First Party

#### Appellant

Garvagh Homes Limited

#### Observer(s)

1. Rosena Cuddy
2. Eamonn and Jane Ryan
3. Ena Ronan

4. Ann Brennan
5. Vincent Carrick
6. Marian and Blayney Russell
7. Rachel Ryan and Matt McGarry
8. Katie and Kian Cleere
9. Stella and Alan Quinn
10. Daniel and Finola O'Connor
11. Sean and Maureen Timon
12. Karen Coghlan
13. Estuary Walk Management  
Company
14. Sinéad and Robert Wilson

**Date of Site Inspection**

17 November 2023

**Inspector**

Sinéad O'Connor

# Contents

1.0 Site Location and Description .....	4
2.0 Proposed Development .....	4
3.0 Planning Authority Decision.....	5
3.1. Decision.....	5
3.2. Planning Authority Reports .....	5
3.3. Prescribed Bodies.....	6
3.4. Third Party Observations .....	6
4.0 Planning History .....	6
5.0 Policy Context .....	7
5.1. Development Plan .....	7
5.4. Natural Heritage Designations .....	11
5.5. EIA Screening.....	11
6.0 The Appeal.....	11
6.1. Grounds of Appeal.....	11
6.2. Planning Authority Response.....	14
6.3. Observations .....	15
7.0 Assessment.....	17
8.0 Appropriate Assessment Screening.....	26
9.0 Recommendation .....	29
10.0 Reasons and Considerations .....	29
Appendix 1 – Form 1 and Form 2	

## 1.0 Site Location and Description

- 1.1. The site has a stated area of 0.2212 hectares and is located on the east side of Estuary Road. The site is 2 kilometres to the west of Malahide town centre and 1.8 kilometres from Malahide Train Station. The site is located 2.5 kilometres to the east of Swords town centre. The area surrounding the site has a suburban character and predominantly comprises 2-storey terraced and semi-detached houses. Directly opposite the subject site on the west side of Estuary Road is the single storey St. Benedict's sheltered housing development.
- 1.2. The site is roughly rectangular in shape and the boundaries are defined by fencing, brick walls, and mature vegetation. The site currently accommodates a single storey 4-bedroom dwelling with a detached garage, in-curtilage car parking and a rear garden. There is an existing domestic vehicular gate onto Estuary Road at the southwest corner of the site.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the demolition of the existing single storey dwelling, garage and boundary treatments and the construction of a 'T' shaped 3- and 4- storey apartment building with 22 no. apartments, 24 no. surface level car parking spaces, 40 no. long term bike parking and 16 no. short term bike parking. Communal open space of 167 sq.m. is proposed at the southern boundary of the site. 6 no. general dwelling types are proposed as follows:
  - 8 no. Type Apt A 2-bedroom apartment (80, 81 and 84 sq.m.)
  - 4 no. Type Apt B 2-bedroom apartment (73 ,75 and 78 sq.m.)
  - 2 no. Type Apt C 1-bedroom own door apartment (54 sq.m.)
  - 3 no. Type Apt D 1-bedroom own door apartment (45 sq.m.)
  - 2 no. Type Duplex E 3-bedroom 2-storey own door apartment (120 sq.m.)
  - 3 no. Type Duplex F 2-bedroom 2-storey own door apartment (100 sq.m.)

## 3.0 Planning Authority Decision

### 3.1. Decision

On the 03 July 2023 Fingal County Council issued a notification of their decision to refuse planning permission for the proposed development. 4 no. reasons for refusal were given, which relate to the inappropriate design, scale, mass and bulk of the scheme; excessive density; substandard provision of open space, bike parking and car parking; unacceptable levels of overlooking; negative impacts on visual and residential amenity; and the unviable nature of the proposed replacement tree planting.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The Fingal County Council Planning Report dated 03 July 2023 forms the basis of the Planning Authority's decision.

- The proposed residential development accords in principle with the RS zoning objective and the proposed unit mix is satisfactory.
- The development fails to overcome the previous reasons for refusal under P.A. Ref. F22A/0636.
- Proposed residential density of 99 units per hectare would exceed the general residential density range of 35 to 50 units per hectare typically sought.
- The design and scale of the development is not in keeping with the character of the area, and the design appears overcomplicated.
- Overlooking of adjoining dwellings and rear private gardens would occur from the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> floors of the proposed development.
- An insufficient quantity of long-term bike parking and car parking is proposed with reference to Tables 14.17, 14.18 and 14.19 of the Fingal Development Plan 2023-2029.
- Failure to provide a sufficient quantity of useable communal and public open space.

- Tree retention and replacement plans appear unviable due to their proximity to the apartment building and their location relative to proposed potable and foul water infrastructure.

### 3.2.2. Other Technical Reports

Parks and Green Infrastructure Division: Recommend refusal owing to failure to meet minimum requirements for public open space provision, the limited amenity value of the proposed open space, and the loss of trees without a viable retention and replanting scheme.

Transportation Planning Section: Request Further Information to address the deficit in car parking and long-term bike spaces, and to reevaluate the design of the bike storage to improve passive surveillance, lighting and security.

Water Services Division: No objection subject to conditions.

### 3.3. Prescribed Bodies

Uisce Éireann: Request Further Information to determine the feasibility of a connection to public water and wastewater infrastructure.

### 3.4. Third Party Observations

16 no. observations, including one from elected representative Councillor Anthony Lavin, were made in respect of the application. All issues raised have been covered in the observations to the appeal.

## 4.0 Planning History

The planning history of the site can be summarised as follows:

- P.A. Ref. F22A/0636: On 19 January 2023 the Planning Authority refused planning permission for the demolition of the existing single storey dwelling and the construction of a 4 storey apartment building with 27 no. units. 4 no. reasons for refusal were given, which relate to the inappropriate design, scale, mass and bulk of the proposal; substandard provision of open space, bike spaces and car parking; negative impacts on visual and residential amenities; and proposed tree loss.

Relevant planning history of the adjoining sites can be summarised as follows:

- P.A. Ref. F00A/0269, ABP Ref. PL.06F.121103: On 28 March 2001 planning permission was granted for the construction of the 19 no. houses to the southeast of the subject site. This development is now called Estuary Walk.
- P.A. Ref. F11A/0161: On 13 September 2011 planning permission was granted for the construction of 2 no. 2-storey semi-detached houses to the south of the subject site.

## 5.0 Policy Context

### 5.1. Development Plan

The Fingal Development Plan 2023-2029 is the relevant Statutory Plan. Policies and objectives of relevance to the proposal include the following:

- The site is zoned RS – Residential to provide for residential development and protect and improve residential amenity. The stated vision for RS lands under Section 13.4 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 Permitted in Principle on RS zoned lands.
- Section 3.5.11.3 states that the Planning Authority will support higher residential densities with due regard to site context, the nature and character of the surrounding area and prevailing patterns of development. Further to this, Section 14.6.3 states that proposed residential densities would be assessed with reference to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009.
- Section 14.5 seeks to achieve the consolidation of urban areas through the reuse of underutilised sites. As per Table 14.3, these types of applications will be assessed with reference to quantitative and qualitative criteria, including the following:
  - The provision of quality design aesthetic which respects and enhances its context and integrates with its surroundings.
  - Development proposals shall respect the architectural character of their surroundings and contribute to the enhancement of the public realm.

- Proposed developments shall consider the height, massing and urban grain of adjacent properties, employ similar or complementary architectural language to its context, and incorporate appropriate residential densities.
- Encourage utilisation of brownfield sites within the built-up footprint of existing settlements.
- Sections 4.5.2.3 and 14.13.2, Table 14.12 and Objective DMSO52 state that not less than 12% of a brownfield development site area shall comprise public open space. In addition, 2.5 ha of public open space should be provided per 1000 population, which is calculated using an occupancy rate of 3.5 persons per dwelling with 3 or more bedrooms and 1.5 persons per dwelling with 2 or fewer bedrooms. Reduced levels of public open space would only be facilitated in exceptional circumstances and a financial contribution would be required in lieu of public open space.
- Table 14.17 requires a minimum of 1 no. long stay bike space per unit and 1 no. space per bedroom and 0.5 no. short stay spaces per unit for 1- and 2- bedroom apartments, and 2 no. long stay spaces per bedroom and 0.5 no. short stay spaces per unit for 3-bed apartments. For the proposed development, I calculated a requirement for 65 no. long term bike spaces and 10 no. short term spaces.
- Under Table 14.18 the subject site is in Car Parking Zone 2. Table 14.19 requires the provision of 1 no. car parking space per unit and 1 no. visitor space per 5 no. units for 1- and 2- bedroom dwellings, and 2 no. car parking spaces per unit and 1 no. visitor space per 5 no. units for 3 no. bedroom dwellings. For the proposed development, I calculated a requirement for 24 no. car parking spaces and 4.4 no. visitor car parking spaces.

Relevant development management objectives include the following:

- Objective CSO21 – Promotion of Higher Densities: Promote higher densities (50+ units per hectare) at appropriate locations in urban built up areas subject to meeting qualitative standards at appropriate locations with particular reference to urban centres and/or in proximity to high-capacity public transport nodes while demonstrating compliance with all relevant Section 28 Ministerial Guidelines.

- Objective SPQHO38 – Residential Development at Sustainable Densities: Promote residential development at sustainable densities throughout Fingal in accordance with the Core Strategy, particularly on vacant and/or under-utilised sites having regard to the need to ensure high standards of urban design, architectural quality and integration with the character of the surrounding area.
- Objective SPQHO39 and DMSSO31 state that new infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.
- Policy CAP8 and Objectives SPQHO44 and DMS0256 support the retention and reuse of existing buildings rather than their demolition and replacement.

## 5.2. **Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023)**

The Development Plan seeks to integrate the provisions of the Apartment Guidelines, as per Objective DMS024. Relevant provisions of the Apartment Guidelines include the following:

- Section 2.4 describes general residential density standards on the basis of proximity as follows:
  - Higher density development is generally appropriate in Central and/or Accessible Urban Locations, which are up to 15 minute walk (1,000 m to 1,500 m) of principal city centres or significant employment locations, within a 10 minute walking (800-1,000m) of high capacity rail services, or up to a 5 minute walk (400-500m) of high frequency urban bus services (10 minute peak hour frequency).
  - Small scale higher density or medium high density development (greater than 45 units per ha) is generally appropriate in Intermediate Urban Locations, which are up to a 10 minute walk (800 m to 1,000 m) of principle towns, suburban centres or employment centres, within a 10 to 15 minute walk (1,000 m to 1,500 m) of high capacity rail services, within a 5 to 10 minute walk (up to 1,000 m) of high frequency urban bus services, or up to a 5 minute

walk (400-500m) of reasonably frequent urban bus services (15 minute peak hour frequency).

- Very small-scale higher density or low-medium density (less than 45 units per hectare) is generally appropriate in Peripheral and/or Less Accessible Urban Locations, which are locations that don't meet the proximity criteria outlined above, or in small towns or villages.
- Section 4.17 states that a minimum of 1 no. bicycle storage space per bedroom shall be applied. Visitor bicycle parking should generally be provided at a rate of 1 space per 2 residential units.
- Under Section 4.24, car parking for development in Peripheral and/or Less Accessible Urban Locations should generally be provided at a rate of 1 no. car parking space per unit and 1 no. visitor space per 3 or 4 units. Lower rates of car parking provision could be applied in Intermediate Urban Locations and Central and/or Accessible Urban Locations.

### **5.3. Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)**

The Development Plan refers to the assessment of proposed residential densities with reference to the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009). Chapter 5 of these guidelines recommends general residential densities based on proximity to city/town centres and public transportation infrastructure, as follows:

- Residential densities of at least 50 units per hectare should be provided at Public Transport Corridors, which are described as areas within 500 metres of a bus stop and 1 km of a rail station. It is stated that the frequency of services during peak times should be considered. Decreasing residential densities should be applied with increased distances from Public Transport Corridors.
- In Outer Suburban locations, residential densities in the range of 35-50 units per hectare should be applied.

## 5.4. Natural Heritage Designations

The subject site is not within or immediately adjacent to any designated or Natura 2000 sites. The subject site is circa 580 metres to the south of the Malahide Estuary Special Area of Conservation (SAC)(site code 000205), the Malahide Estuary Special Protection Area (SPA)(site code 004025) and the Malahide Estuary proposed Natural Heritage Area (pNHA) (site code 000205). The site is circa 4.7 kilometres to the northwest of the Baldoyle Bay SAC (site code 000199), the Baldoyle Bay SPA (site code 004016), and the Baldoyle Bay pNHA

## 5.5. EIA Screening

See completed Form 1 and Form 2 in Appendix 1. 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 EIA determination, therefore, is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The First Party's grounds of appeal are summarised below as follows:

- The Appellant queries the appropriateness of the phrase 'out of character' and notes that the existing bungalow on the 0.22-hectare site is out of character with the pattern of development in the area.
- The proposed densification of the site accords with planning policies that seek to prevent urban sprawl, make efficient use of zoned and serviced land, promote development in proximity to public transport nodes, facilitate infrastructural investment, and support diverse communities.
- The subject site is located in close proximity to existing services and community infrastructure, which would benefit future residents.
- Proposed communal open space comprises 167 sq.m., which exceeds the Development Plan standard of 146 sq.m.. Proposed public open space comprises

the walkway at the western boundary and the areas to the sides of the proposed building, which amount to approximately 289 sq.m. or 13% of the site area. This exceeds the Development Plan standard of 12% of the total site area. The area surrounding the subject site is well served by existing sports and recreation facilities.

- The proposed development would offer a high level of internal and external amenity for future residents.
- The P.A. was satisfied that the scheme accommodates a suitable unit mix (23% 1-beds, 68% 2-beds, and 9% 3-beds) and that the apartments meet the minimum requirements for sunlight, floor areas, dual aspect units, floor to ceiling heights, and the number of units per stair core. The P.A.'s assessment in respect of bicycle parking, EV charging, setbacks from Estuary Road, water services and Part V units is noted.
- The provision of car parking is adequate with reference to the Appellant's experience with apartment developments, the location of the site, and emerging developments in respect of car usage and parking provision. Local Authorities do not typically accept car parking spaces for Part V units.
- In respect of the first reason for refusal, the proposed building is appropriately scaled with reference to its location fronting a Distributor Road, which is sufficiently wide to accommodate the building without serious impacts on visual amenity.
- The provision of 2-storey low-density dwellings at the site would be inconsistent with planning policy and would likely be refused planning permission by An Bord Pleanála due to the underutilisation of this serviced urban site. The height of the proposed development is not inappropriate with reference to the nearby 2-storey dwellings as it comprises a 2-and 3-storey building with roof level accommodation.
- The Appellant does not accept the P.A.'s conclusions in respect of the design, scale, massing and materiality of the scheme or their findings that the development would have detrimental impacts on visual amenity. The P.A. is obsessed with maintaining "the established character of the area".
- In respect of the second reason for refusal, the proposed residential density and reduced car parking provision is appropriate with reference to the site's location

close to existing services and facilities. Proposed bike storage is appropriate but could be increased to meet demand in the future.

- In respect of overlooking, the proposed building is set back from the north, south and eastern boundaries. The private rear gardens of the dwellings on Seabury Lane are already overlooked by the adjoining dwellings, and the proposed northern boundary wall would prevent any significant increases in overlooking. There are no windows on the eastern gable end of the proposed building, which would prevent overlooking in that direction. At the southern boundary, overlooking would be prevented by the mature tree planting.
- The proposal could not constitute overdevelopment as proposed site coverage is 31%. The scheme represents a high-quality design response to the subject site.
- The established building line, grain and plot width could only be replicated at the site by standard semi-detached or detached houses.
- In respect of the third reason for refusal, the proposed development has been designed with reference to the site-specific constraints and opportunities, rather than replicating the approach taken elsewhere.
- The P.A. conclusions are contradictory in stating that the scheme is both restricted and too large.
- The Appellant does not agree that the proposed development would be visually dominant. In respect of setting an undesirable precedent, the Appellant states that there are no similar sites in the vicinity that the scheme might set a precedent for. An Bord Pleanála are not bound by development precedent in their assessments.
- In respect of the fourth reason for refusal, the Appellant does not accept that the tree planting proposal for the site is unviable.
- The appeal statement includes a response prepared by Andy Boe, an arborist with Park Hood. It is stated that the proposed works would occur in relative proximity to the Beech Tree to be retained however, best practice in accordance with BS5837:2012 'Trees in Relation to Design, Demolition and Construction to Construction – Recommendations', would be employed during the construction phase to ensure the viability of this tree. The proposed perimeter planting has been revisited and that the trees proposed have been successfully utilised in other

projects. It is confirmed that the proposed trees will be 'rootballed', which is the best method for establishing heavy and semi mature trees. Reference is made to the cross sections in drawing number 7689 PHL 3900 Sheet 1 and 3901 Sheet 2 (Note: The submitted documentation does not include the cross sections referred to). The proposed trees will have sufficient room to grow and mature, and it is confirmed that Park Hood have been engaged by the Applicant during the construction phase of this project.

- There are no Class A trees at the site. 41 no. the of 73 no. trees at the site are either dead or category U trees. The Cyprus trees at the eastern boundary are dead and are a non-native species of no biodiversity value. Outside of the existing Beech tree, to be retained, the other category B and C trees on the site comprise non-native species, which will be replaced by native Beech and Hornbeam trees. The proposed planting will, over time, soften the site and integrate the development with its surroundings.
- The subject development is consistent with Regional and National policy and the Fingal County Development Plan and accords with the proper planning and development of the area. The benefits of the scheme outweigh the objections of the surrounding residents and that the proposal should be granted in light of the current housing shortage.

## 6.2. Planning Authority Response

A response has been received from the Planning Authority dated 21 August 2023. I consider that the main issues raised in this response are as follows:

- The grounds of the First Party appeal have been reviewed and the P.A. is of the opinion that the subject development is unacceptable due to its scale, mass and height and would dominate the streetscape.
- The submitted information fails to illustrate how the proposed development would integrate in its surroundings without undue visual amenity impacts, owing to the substantial removal of existing trees.

- The subject development represents overdevelopment of the site owing to its scale and layout, which would have detrimental impacts on existing and future residential amenities.

The response concludes by requesting that An Bord Pleanála upholds their decision.

### 6.3. Observations

14 no. observations to the appeal have been received from adjoining residents. The matters raised are summarised together below as follows:

- The scale and residential density of the development is unsuitable with reference to the size of the site and the existing pattern of development. The proposed development has failed to balance the need for higher density development with the requirement to respect the established character of the area.
- The development is out of character with existing development in the area, which is a requirement for infill development under Development Plan Objective SPQHO42.
- Malahide is a commuter town, rather than a suburb as stated in the Appellant's submission. Therefore, references to 'densifying the suburbs' are incorrect.
- The proposed development fails to accord with Objective SPQH043 of the Development Plan that supports contemporary and innovative design in infill developments, which respects the character and architectural heritage of the area.
- The development would be visually dominant on the streetscape and, therefore, does not align with Section 4.4.8 of the Development Plan in respect of achieving high quality design in the public realm and respecting existing building lines.
- The development fails to accord with Development Plan objectives PM44, PM45, DMS39, DMS40 and DMS44 in respect of its design and layout.
- The submitted documentation refers to design examples including historical terraces in Malahide Village, which are 3 kilometres from the site.
- The development would exacerbate existing traffic issues on Estuary Road and Seabury Lane and create hazardous cycling conditions.

- Increased traffic arising from the development would impact negatively on the playschools and Montessori's on Seabury Lane, and the children that use these roads to travel to and from school.
- Car parking provision at the site is inadequate, which would cause future residents to park on the adjoining residential roads. Increased on-street parking in the existing residential areas will increase the risk of injury to all road users and make it difficult for residents to safely drive in and out of their driveways.
- Insufficient provision is made at the site for construction vehicles, which would cause these vehicles to be parked on adjoining roads.
- Concerns are raised regarding parking for emergency vehicles at the subject site.
- The footpath on Estuary Road at the boundary of the site is too narrow for pedestrians, buggies or wheelchairs to pass, which creates a traffic hazard due to people stepping onto the road. The proposed development should incorporate a wider footpath, which would reduce the size of the subject site.
- Due to its height, the development is out of character with the surrounding area.
- The proposed development would set a highly undesirable precedent for the area.
- The development would have an adverse impact on the quality of life and mental health of the vulnerable residents of St. Benedict's, directly opposite the subject site.
- The subject site is elevated above the surrounding area, which would cause the proposed development to have significant impacts on the adjoining residents in respect of overlooking and loss of natural light.
- The proposed development would result in the loss of privacy at the adjoining dwellings owing to its height and the windows serving the proposed apartments.
- In response to the Appellant's submission, it is stated that the rear private gardens belonging to the dwellings on Seabury Lane are mutually overlooked however, the neighbouring dwellings do not have a direct line of sight into adjoining rear windows. North facing windows of the proposed development would directly oppose and overlook the rear windows of the dwellings on Seabury Lane.

- The loss of light to the adjoining rear gardens because of the proposed development would reduce the amenity value of these areas.
- The loss of trees would impact on birds and other animals that utilise the site, therefore, the proposed development would not align with Objective GI 19 of the Fingal Development Plan.
- Removal of trees at the site would impact negatively on the privacy of adjoining residents.
- There are existing documented issues with foul water infrastructure in the locality, and the proposed development would exacerbate these issues.
- Negative impacts upon existing telecommunications infrastructure would occur.
- The proposed development would impact upon the sense of community in this established residential area.
- The development would give rise to noise, dust, dirt and vermin, which would impact negatively on the existing residents, and would increase the carbon footprint of the area.
- The proposed works would devalue and cause damage to the existing properties in the area.
- There is insufficient capacity in the existing pre-schools and schools to accommodate additional demand arising from the proposed development.
- Proposed open space at the subject site is of low amenity value and would not receive a sufficient level of sunlight.

## 7.0 **Assessment**

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

- Design and Landscaping
- Compliance with Development Standards

- Residential Amenity

## 7.1. Design and Landscaping

- 7.1.1. The proposed development comprises a part 3- and 4-storey, 'T' shaped building accommodating 22 no. apartments. Each apartment has a private open space in the form of a balcony or terrace. A communal open space is provided at the southern boundary. 24 no. surface level car parking spaces are proposed. Short stay bike parking is provided at the main entrances to the building and long-term bike storage is provided at the eastern site boundary.
- 7.1.2. The Fingal County Development Plan does not prescribe a blanket standard for development height and supports, in general, the application of sustainable residential heights and densities in urban areas. Objective SPQH039 states that infill development shall respect the height and massing of the existing residential units. With reference to the character of the surrounding area, I consider that an appropriately designed taller building could, in principle, be provided at the subject site. However, it is my opinion that the proposed development is too large and bulky at this location and dominates the streetscape on Estuary Road. In my view, the proposed development, owing to its size and massing, does not reflect or enhance the character of the area and, therefore, does not meet the requirements for taller infill development in accordance with the Development Plan.
- 7.1.3. Having reviewed the submitted documentation and undertaken a site visit, I consider that the overall design of the proposed development is inappropriate at this location due to its layout, scale and massing. Section 14.10.1 of the Development Plan promotes contemporary design in infill development, which I do not consider has been achieved in this instance. The submitted documentation states that the design of the scheme draws upon classical influences and existing historical building forms in Malahide. I consider that these references are unsuitable in the existing suburban context. It is my opinion that the overall building is too large with reference to the size and context of the site and fails to provide a suitable transition at the shared boundary with Estuary Walk. I consider that the proposed mansard roof is overly dominant and bulky and exacerbates the incongruous scale of the building. In my view, the proposed roof structure is overly complex owing to the varying roof styles

and heights. Drawing from the above, I consider that the proposed development does not represent an appropriate design response at the subject site.

- 7.1.4. Having reviewed the documentation submitted, I do not consider that the Appellant has sufficiently illustrated that the proposed tree planting, as shown in Drawing No. 7689-L-2000 'Landscaping Proposal', can be implemented at the site. Drawing No. 22176-500 'Proposed Site Services Layout' shows proposed surface water sewers within 0.5 metres of the stems of proposed tree planting at the eastern and western boundaries of the site. Drawing No. NRB-RFI-001, which is appended to the letter prepared by NRB Consulting Engineers dated 18 April 2023, shows that the proposed ducting to serve the EV charging points would run along the full extent of the northern boundary. This ducting appears to directly conflict with proposed tree planting in this location. I note that the response to reason for refusal no. 3 prepared by Park Hood does not refer directly to these potential conflicts between the proposed tree planting and site services. Notwithstanding proposals to 'root ball' the proposed trees, I consider that potential conflicts with proposed services infrastructure would undermine the integrity of the proposed trees.
- 7.1.5. The Parks and Green Infrastructure Division in their report refer to the minimal separation distances between the proposed building and the perimeter walls, and the proximity of proposed site services to the beech tree to be retained and the replacement trees. This report states that the proposed loss of existing trees in the absence of a viable tree planting programme is unacceptable and recommends that permission be refused. Drawing from the above, I am not satisfied that the necessary replacement tree planting can be undertaken at the site.
- 7.1.6. If the Board is minded to grant planning permission for the proposed development, I recommend that the Appellant is requested to submit cross sections 7689 PHL 3900 Sheet 1 and 3901 Sheet 2 referred to in the Park Hood response. The Parks and Green Infrastructure Division of Fingal County Council should be offered the opportunity to comment on any submitted drawings. I recommend that a condition be attached to require the timely implementation of the landscaping plan, including the replacement of any tree failures.
- 7.1.7. I consider that parts of the submitted documentation may not provide a wholly accurate representation of the visual impact of the proposed development. The

contiguous elevations, drawing no. 22-136-600, appear to show mature trees at the eastern boundary that over-sail the height of the proposed building (stated 12.6 metres) and provide a leafy backdrop to the development. Landscaping drawing No. 7689-L-2000 shows that the proposed trees at the eastern boundary would be 5.5 metres in height and, therefore, would not provide the visual buffer shown in the submitted contiguous elevations. The submitted photomontages appear to include parts of the mature trees and scrub vegetation at the northern boundary of the site, which are marked for removal in drawing no. 7689-PH-2001. Notwithstanding these concerns, I note that the submitted Townscape and Visual Impact Assessment (VIA) found that the operational phase of the proposed development would have an overall 'Moderate Neutral' impact on the surrounding townscape based on the photomontages prepared. I consider that the conclusions of the VIA are disproportionately reliant on the proposed tree planting that, as is discussed elsewhere in this report, may not be viable at the site. In the absence of mature perimeter tree planting, I consider that the proposed development would be highly visible on the skyline when viewed from Estuary Road and would dominate the views within Estuary Walk. I consider that the proposed development, owing to its scale and design, would have a negative impact on the streetscape and visual amenity value of the area.

- 7.1.8. Drawing from the above, I consider that the proposed development fails to meet the design requirements for infill development under the Development Plan and would be visually dominant at this location. The Applicant has not sufficiently illustrated that proposed replacement tree planting would be viable with reference to proposed service infrastructure. On this basis, I recommend that planning permission be refused.

## **7.2. Compliance with Development Standards**

- 7.2.1. Section 2.4 of the Apartment Guidelines and Chapter 5 of the Sustainable Residential Development Guidelines recommend suitable residential densities for new proposals based on proximity to existing services and transport infrastructure. The site is not located near any urban centre or high frequency rail service and, therefore, is not in an Accessible Urban Location or town centre location where higher density development is facilitated under the Guidelines. I note that there are 4 no. bus stops within easy walking distance of the site, which are served by Dublin

Bus route 32X (UCD to Malahide), 42 (Talbot St to Portmarnock), 42D (DCU to Portmarnock) and 142 (UCD to Portmarnock), and the Go Ahead route 102 (Sutton Dart to Dublin Airport). Having reviewed the timetables of these bus services, I am not satisfied that a reasonably frequent bus service of at least 1 no. bus every 15 minutes is currently provided throughout both the am and pm peak times. Drawing from the above, I consider that the subject site is currently in a Less Accessible Urban Location under the Apartment Guidelines and an Outer Suburban Site under the Sustainable Residential Development Guidelines, where residential densities of less than 45 units per hectare and between 35-50 units per hectare are recommended, respectively. As part of the phased roll-out of the Bus Connects programme the existing bus routes will largely be replaced by Radial Route 20 (Malahide to City Centre), Local Route L81 (Sutton to Dublin Airport), and Peak-Only/Express Routes X77 (Portmarnock to UCD) and X78 (Malahide to UCD). I have reviewed the publicly available route frequency tables and I consider that a reasonably frequent service may only be provided between 07:00 and 08:00 during weekdays when the X77 service is running. It is my opinion that a reasonably frequent service is not proposed during the other peak commuting hours. I note that the Bus Connects frequency tables are subject to change and a greater number of buses may serve Estuary Road and Swords Road in the future. On the basis of the above, the proposed residential density of 99.5 units per hectare, which is significantly higher than the densities provided for under these Guidelines, would not be considered appropriate in this location.

- 7.2.2. Section 3.5.11.3 and Policy SPQH35 of the Development Plan generally support higher density residential development in urban areas. In achieving higher densities, due regard should be had for the site context, the established pattern of development and the character of the surrounding area, and the requirement to meet relevant development management standards. In this regard, I note that the subject development has a far higher residential density than the surrounding residential areas, which comprise typical suburban low-medium density developments. As is discussed elsewhere in this report, the proposed development does not meet the necessary standards in respect of open space provision, car and bike parking and proposed tree planting. Drawing from the above, I do not consider that the proposed

development meets the requirements for higher residential density development outlined in the Plan.

- 7.2.3. The submitted documentation states that 289 sq.m. of public open space is provided at the site, comprising the landscaped walkway at the western boundary and at the perimeter of the building. These open space areas are proposed in addition to the communal open space of 167 sq.m. provided at the southern boundary of the site. Table 4.3 requires a minimum of 12% public open space at infill or brownfield sites, in addition to 2.5 ha of public open space per 1000 population, which would result in a requirement for at least 1,190.44 sq.m. of public open space at the subject site. Section 4.5.2 states that incidental or narrow pieces of open space used for the retention of vegetation or for screening planting are not counted as open spaces under the Development Plan, which I consider would significantly reduce the overall quantity of public open space proposed in this case. In addition, I consider that the proposed public open spaces fail to provide for passive and active recreation and would be of limited amenity value to the future residents due to their linear design and proximity to the proposed building.
- 7.2.4. The Development Plan facilitates the payment of a financial contribution in lieu of public open space in exceptional circumstances. I note that the P.A. has not sought the payment of financial contributions to make up for the shortfall in public open space proposed in this case. Given the regular shape and relatively unconstrained nature of the site, I do not consider it appropriate in this instance to charge a financial contribution in lieu of providing high quality public open space.
- 7.2.5. The report prepared by the Parks and Green Infrastructure division states that the proposed public open spaces at the site fail to achieve the minimum quantitative and qualitative standards of the Development Plan and recommends that planning permission is refused. In failing to meet the standards of the Development Plan, I consider that the proposed public open spaces would be of limited amenity value to future residents.
- 7.2.6. The proposed development includes 24 no. car parking spaces, which is below the car parking standards in Tables 14.18 and 14.19 of the Plan that would require 28.4 no. spaces to serve the scheme. Under Section 4.24 of the Apartment Guidelines car parking in peripheral or less accessible urban locations should generally be provided

at a rate of 1 no. space per unit and 1 no. visitor parking space per 3 to 4 units, which would give a requirement for between 27.5 and 29.3 no. car parking spaces at the scheme. I note that the Development Plan facilitates reduced car parking requirements in centrally located and well served areas where a significant modal shift to sustainable transport modes can be expected. As is discussed elsewhere in this report, I consider that the subject site is located in a less accessible urban area with reference to existing and proposed bus routes and is relatively remote from town centre shops and services. In this way, I do not think that a significant modal shift away from the private car could reasonably be achieved at this site. I consider that the under provision of car parking at the subject site could lead to ad hoc parking on the adjoining roads, which would limit accessibility and create a traffic hazard.

- 7.2.7. In respect of bicycle parking provision, I note that there are some discrepancies in the submitted documentation regarding the total number of spaces provided. For the purposes of this assessment, I am relying on the description of development provided in the planning application form, which states that a total of 56 no. bike spaces are proposed. Section 5.4 of the submitted Town Planning Report states that a total of 40 no. long term spaces and 16 no. short term spaces are proposed. This represents a deficit of 19 no. spaces with reference to the Development Plan standards. I do not consider that the Appellant has adequately shown that the proposed 40 no. long stay bike spaces can be accommodated in the bike storage unit shown in Drawing No. 22-136-105. Section 6.5.5 of the Cycle Design Manual published by the National Transport Authority and Department of Transport (September 2023) states that, in general, a 2-metre-wide aisle should be provided between bike storage banks and a 1 metre separation should be provided between the centre of standard sheffield bicycle stands. Notwithstanding that the proposal provides for semi-vertical bike racks, I consider that the proposed long term bike storage area, at 6.2 metres long and 3.75 metres wide, would be far too small to accommodate the 2 no. rows of 10 no. double-sided bike stands proposed. I consider that the appellant has failed to illustrate how larger and non-standard bicycles could be accommodated at a rate of 5% of the proposed spaces, as per Section 6.3 of the Cycle Design Manual. It is my opinion that this shortfall in standard and non-standard bike spaces is unacceptable with reference to the reduced car

parking provision at the site and would have a negative impact on the residential amenity of future residents.

7.2.8. The report from the Transportation Planning Section of Fingal County Council found a deficit of 5 no. car parking spaces and 14 no. long-stay bike spaces to serve the proposed development and recommended that Further Information be sought from the applicant to rectify this shortfall. Given the limited space available at the subject site, I do not consider that the shortfall in car and bike spaces could be addressed without a substantial re-design of the proposed development.

7.2.9. In light of the foregoing, I consider that the proposal represents substandard development with reference to the Development Plan and accommodates an excessive residential density with reference to relevant Guidelines. I recommend that planning permission be refused on this basis.

### **7.3. Residential Amenity**

7.3.1. From the submitted floor plans, Drawing Nos. 22-136-102 and 22-136-103, I consider that the proposed development meets the minimum development standards in Appendix 1 of the Apartment Guidelines. I note that Bedroom 2 of Apartment 19 has a stated area of 11.1 sq.m., which is below the minimum area for a double bedroom. I consider that this is likely a typo as the bedrooms both above and below that unit, which are largely identical, are 11.4 sq.m.. In this way, I consider that the proposed apartments would be of sufficient residential amenity for future residents.

7.3.2. At its closest points the proposed building is located 13.5 metres from the northern boundary of the site, 2.65 metres from the eastern boundary and 2.26 metres from the southern boundary. Owing to the height, design and massing of the proposed development, I do not consider that these proposed separation distances are sufficient to prevent negative overbearing impacts on adjoining residents. During my site visit I noted that the subject site is elevated above the dwellings on Seabury Lane, which would further accentuate overbearing of the proposed development.

7.3.3. In respect of potential for overlooking, Section 14.6.6.3 and objective DMSO23 require a minimum separation distance of 22 metres between opposing windows above ground level to protect and maintain residential amenity. The separation distances to the adjoining dwellings are not stated in the submitted drawings however, I have calculated that the north facing windows at proposed Duplex

Apartment 09 would be circa 23 metres from the rear windows of No. 1 Seabury Lane., which I consider an adequate level of separation for the protection of residential amenity at this location. The south facing windows at proposed Duplex Apartment 12 would be circa 13 metres from, what appear to be, windows of habitable rooms on the 1<sup>st</sup> floor of 'The Swallows', Estuary Road. Aside from the proposed landscaping, discussed elsewhere in this report, no mitigation measures are proposed to reduce or mitigate against overlooking of existing dwellings. As a result, it is my opinion that the proposed development would have a negative impact on the privacy of adjoining dwelling to the south due to overlooking of habitable 1<sup>st</sup> floor rooms.

- 7.3.4. The submitted Daylight & Sunlight assessment found that the proposed development would cause a reduction in Vertical Sky Component (VSC), Annual Probable Sunlight Hours (APSH) and Sun on the Ground at the adjoining properties. These reductions were not found to be significant with reference to the guidelines set out in BR209:2022. In this way, the proposed development would not have a significant negative impact on the sunlight or daylight reaching the adjoining dwellings. The submitted report states that the proposed apartments meet the minimum requirements of the BRE Guidelines (2022) for direct sunlight however, I note a lack of clarity in the assessment of daylighting at habitable rooms. With reference to Section 3.1.6 of the BRE Guidelines, I have found that the main living areas of apartments 01, 02, 03, 06, 07, 08, 10, 11, 17 and 18 are not within 90 degrees of South, which may lead to these areas being perceived as insufficiently sunlit. I consider that the Applicant has not satisfactorily demonstrated that the proposed units would be sufficiently sunlit however, given the substantive issues discussed elsewhere in this report, I do not recommend that Further Information be pursued in this instance.
- 7.3.5. Drawing from the above, I consider that the proposed development would have an overall negative impact on the residential amenity of adjoining dwelling during to overbearing and overlooking. On this basis, I recommend that planning permission be refused.

## 8.0 Appropriate Assessment Screening

- 8.1.1. The nearest designated sites to the subject site are the Malahide Estuary Special SAC (site code 000205), the Malahide Estuary SPA (site code 004025) and the Malahide Estuary pNHA (site code 000205), which are approximately 580 metres to the north of the site. The Baldoyle Bay SAC (site code 000199), the Baldoyle Bay SPA (site code 004016), and the Baldoyle Bay pNHA are approximately 4.7 kilometres to the southeast of the site. The subject site is separate from these protected areas by existing urban and agricultural development.

Natura 2000	Site Code	Qualifying Interests	Conservation Objectives
Malahide Estuary Special SAC	000205	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (Glaucopuccinellietalia maritimae) [1330]</p> <p>Mediterranean salt meadows (Juncetalia maritimi) [1410]</p> <p>Shifting dunes along the shoreline with Ammophila arenaria (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
Malahide Estuary SPA	004025	<p>Great Crested Grebe (Podiceps cristatus) [A005]</p> <p>Light-bellied Brent Goose (Branta bernicla hrota) [A046]</p> <p>Shelduck (Tadorna tadorna) [A048]</p> <p>Pintail (Anas acuta) [A054]</p>	To maintain or restore the favourable conservation condition of the bird species listed as Special Conservation Interests for this SPA

		<p>Goldeneye (<i>Bucephala clangula</i>) [A067]</p> <p>Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p> <p>Redshank (<i>Tringa totanus</i>) [A162]</p> <p>Wetland and Waterbirds [A999]</p>	
Baldoyle Bay SAC	000199	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p>	To maintain or restore the favourable conservation condition of the Annex I habitat(s) and/or the Annex II species for which the SAC has been selected.
Baldoyle Bay SPA	004016	<p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p>	To maintain or restore the favourable conservation condition of the bird species listed as Special

		Ringed Plover (Charadrius hiaticula) [A137]  Golden Plover (Pluvialis apricaria) [A140]  Grey Plover (Pluvialis squatarola) [A141]  Bar-tailed Godwit (Limosa lapponica) [A157]  Wetland and Waterbirds [A999]	Conservation Interests for this SPA
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- 8.1.2. During the site inspection I did not see any evidence of waterbodies at the subject site and the EPA mapping does not show any waterbodies within or immediately adjoining the site. The Gaybrook Stream, which flows into Malahide Estuary, is located 385 metres to the east of the subject site and is separated from the site by urban development. The subject site is separated from Baldoyle Bay SAC and SPA by existing urban and recreational development, and there are no direct hydrological connections between these sites and the subject site. I note that the site is served by mains surface and foul water infrastructure. In this way, there are no source receptor pathways between the subject site and any designated areas.
- 8.1.3. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment, it has been concluded that the proposed development individually or in combination with other plans or projects would not be likely to have a significant effect on Malahide Estuary Special SAC and SPA or the Baldoyle Bay SAC and SPA, or any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.
- 8.1.4. This determination is based on the following: the lack of hydrological connections to the designated sites, the fully serviced nature of the site and the urban character of the surrounding area.
- 8.1.5. This screening determination is not reliant on any measures intended to avoid or reduce potentially harmful effects of the project on a European Site.

## 9.0 Recommendation

- 9.1. I recommend that planning permission be refused for the reasons and considerations as set out below.

## 10.0 Reasons and Considerations

1. The proposed development, by reason of its lack of quality public open space, insufficient provision of car parking and bike storage, and excessive residential density would conflict with the provisions of the Fingal County Development Plan 2023-2029 for the area and would constitute overdevelopment of this site. Proposed residential densities at the site exceed the range recommended in the Sustainable Urban Housing: Design Standards for New Apartments Guidelines for Planning Authorities (2023) and the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (Cities, Towns & Villages) (2009), referenced in the County Development Plan, and would result in deficiencies in the provision of high-quality open spaces, car parking and bike storage. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The proposed development, by reason of its design, scale, bulk, height, and proximity to site boundaries, would be out of character with the existing development in the vicinity of the site. Furthermore, the Board is not satisfied that the proposed tree planting, as shown in the submitted documentation, would be viable due to conflicts with proposed site services and the narrowness of the planting areas. The proposed development would, therefore, have unacceptable negative impacts on visual and residential amenities in the locality and would 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.

Sinead O'Connor

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Sinead O'Connor  
Planning Inspector

21 November 2023

## Appendix 1 - Form 1

### EIA Pre-Screening

**[EIAR not submitted]**

<b>An Bord Pleanála Case Reference</b>	ABP-317681-23		
<b>Proposed Development Summary</b>	Demolition of bungalow and garage and the construction of 22 residential units. Vehicular access and separate pedestrian access are proposed along Estuary Road and associated site works.		
<b>Development Address</b>	Larch Wood, Estuary Road, Malahide, Co. Dublin, K36 F620		
<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>	X
		<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) or 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>	X		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>	X	10. Infrastructure Projects (b) (i) Construction of more than 500 dwelling units.	Proceed to Q.4

		(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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4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: Sinead O'Connell

Date: 20/11/2023

## Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-317681-23	
<b>Proposed Development Summary</b>	Demolition of bungalow and garage and the construction of 22 residential units. Vehicular access and separate pedestrian access are proposed along Estuary Road and associated site works.	
<b>Development Address</b>	Larch Wood, Estuary Road, Malahide, Co. Dublin, K36 F620	
<p><b>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.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development</b></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 subject development comprises residential development in an area characterised by residential development. In this way, the proposed development is not exceptional in the context of the existing environment.</p> <p>During the construction phase the proposed development will create demolition waste. Given the moderate size of the existing dwelling I do not consider that the demolition waste arising would be significant in the local, regional or national context. No significant waste, emissions or pollutants would arise during the operational phase due to the residential nature of the proposal.</p>	No
<p><b>Size of the Development</b></p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p>	<p>The proposed development of 22 no. units has a higher residential density than the surrounding residential areas but the scheme would not be of an exceptional size.</p> <p>Owing to the serviced urban nature of the site and residential character of the scheme I do not think that there is potential for significant cumulative impacts.</p>	No

<p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>		
<p><b>Location of the Development</b> Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?  Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The subject site is not located within or immediately adjoining any protected area. There are no waterbodies at the site and there are no hydrological links between the subject site and any designated site. Therefore, there is no potential for significant ecological impacts as a result of the proposed development.</p> <p>The site is located within a serviced urban area. I do not consider that there is potential for the proposed development to significantly affect other significant environmental sensitivities in the area.</p>	<p>No</p>
<p><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p>EIA not required.</p> <p><b>X</b></p>	<p><b>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</b></p> <p>Schedule 7A Information required to enable a Screening Determination to be carried out.</p>	<p><b>There is a real likelihood of significant effects on the environment.</b></p> <p>EIAR required.</p>

Inspector: Sinead O'Gara

Date: 20/11/2023

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

(only where Schedule 7A information or EIAR required)