



An
Bord
Pleanála

Inspector's Report

ABP-317770-23

Development	Demolition of dwelling and construction of a replacement dwelling and associated works. Natura Impact Statement lodged with application.
Location	Hollybush, Beach Lane, The Burrow, Portrane, Co. Dublin, K36 Y338
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F22A/0534
Applicant(s)	Elaine Scanlon.
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Elaine Scanlon
Observer(s)	None
Date of Site Inspection	20 December 2023
Inspector	Paula Hanlon

1.0 Site Location and Description

- 1.1. The site subject to this appeal (hereafter referred to as 'the site') is located along the western side of a narrow and winding cul-de-sac road referred to as Beach Lane, in the Burrow area of Portrane, Co. Dublin. The immediate area is typified by caravan parks, a mix of chalet type structures which are in residential occupation and permanent detached houses on single plots. Portrane beach is approximately 180 metres (east of), and Rogerstown Estuary approximately 370 metres (west of) the site.
- 1.2. The site (stated area 0.108ha) is currently occupied by a low-profile dwelling of timber construction and slate roof, with haphazard extensions to its western and eastern elevation. The footprint of the structure is sited at the northern most end of the site, with the remainder of the site fronting onto Beach Lane laid in grass. Its design and form define this structure as a chalet and submitted documentation informs that it was constructed pre-1964. The chalet is served by an established vehicular access with restricted sightlines off the serving road. The topography of the site is generally flat and existing boundary treatment along the roadside comprises a rendered wall with hedging on its inner face. Lands to the west (rear) of this site are open and exposed. A larger chalet is sited on adjoining lands to the north of this site, with permanent low-rise dwellings on lands to the east (opposite this site) and open agricultural lands are sited to the south and west of the site. At time of site inspection, the site was dry and neither site features nor vegetation suggested any drainage issues.
- 1.3 The site is within the Nanny Delvin Hydrometric Area and WFD catchment and the Ballough Stream_SC_010 WFD Sub-catchment. It is within a designated 'Highly Sensitive Landscape', on lands zoned 'RU' Rural. The site is also identified as being within an area designated within Flood Zone A and Flood Zone B of the Strategic Flood Risk Assessment (SFRA) which was undertaken in preparation of the Fingal Development Plan 2023-2029. There are no other designations (including ecology, archaeology, coastal zone management) attributed to the site.

2.0 Proposed Development

2.1. The proposed development constitutes the demolition of an existing chalet type dwelling (84m²) and the construction of four-bedroom dwelling (176m²) with a maximum ridge height of 6.65 metres on site, which will be occupied on a year-round basis. External finishes are predominantly timber cladding and eternit fibre cement profile sheeting.

2.2. The application was accompanied by the following documentation of note -

- Appropriate Assessment Screening Report and Natura Impact Statement
- Design Report & Visual Impact Study
- Site Characterisation Report
- Soil Infiltration Test for Design of Soakaway
- Letters of Consent from landowner and adjoining landowner (regarding inclusion of a 7-metre strip of land (to the west) and contained within the redline boundary.

Additional Documentation of note submitted in response to the Planning Authority's (PA's) request for further information include:

- Coastal Erosion Risk Assessment Report (updated 6 April 2023)
- Copy of Uisce Eireann's Confirmation of Feasibility (Wastewater Connection – with requirement to receive consent of Third-Party landowner(s) regarding required 60 metre network extension works across private lands).
- Natura Impact Statement (Updated)
- Solar Study.

3.0 Planning Authority Decision

3.1. Further Information

The PA requested further information on 23 February 2023 in regard to; the likelihood of erosion at the site (and the predicted impacts of climate change on the coastline); wastewater, update Natura Impact Statement and the submission of an overshadowing and loss of natural light report in respect of adjoining property to north of site. A response to the further information request was received on 24 May 2023 and deemed to be 'significant' further information by the PA.

3.2. Decision

By Order dated 18 July 2023, Fingal County Council issued a Notification of decision to refuse planning permission, stating two reasons for refusal as follows:

Refusal Reason 1:

'Having regard to the physical nature and characteristics the existing structure, detailed in the plans and particulars submitted with the application, it is considered that the proposed development relates to the replacement of an existing chalet with a permanent residential dwelling. Objective DMSO47 of the Fingal Development Plan, 2023-2029 states inter alia that 'applications for the replacement or conversion of existing season chalets and seaside huts by dwellings which can be resided in all year round will only be considered in exceptional circumstances' and further sets out criteria which must be complied with. The applicant has failed to demonstrate to the satisfaction of the Planning Authority that such exceptional circumstances present in the application under consideration and has failed to comply with all specified criteria, including that the site shall not be liable to the impacts of climate change, including coastal erosion and flooding. Accordingly, the development would fail to comply with and would contravene materially Objective DMSO47 of the Fingal Development Plan 2023 - 2029 and would be contrary to the proper planning and sustainable development of the area'.

Refusal Reason 2:

‘Having regard to the location of the site in proximity to an area within 100m of a coastline at risk of coastal erosion, the applicant has failed to demonstrate that the development as proposed may be carried out without undue negative impacts on this vulnerable coastline or would exacerbate requirements for coastal defence works in the area over the lifetime of the development. The development as proposed would therefore seriously injure the amenities of the area would be contrary to proper planning and sustainable development of the Burrow area’.

3.3. Planning Authority Reports

3.3.1. Planning Report(s)

A planning report prepared on 29 November 2022, in accordance with the 2017-2023 Fingal Development Plan, recommended that further information be sought. A final planning report completed on 17 July 2023 in accordance with the provisions of the superseding Development Plan 2023-2029 forms the basis for the decision by Fingal County Council to refuse permission.

3.3.2. Other Technical Reports

Water Services: Further Information sought on wastewater, no objection to flood risk and conditions recommended on surface water disposal (report dated 22/11/2022).

Coastal Erosion Section: Concerns expressed regarding details submitted on ground conditions (aeolian sediments over Malahide formation with no depth to bedrock indicated) and the content of Coastal Erosion Risk Management Study and the Irish Coastal Protection Strategy Study 2013, submitted by the applicant, which does not provide an up-to-date assessment of current coastal erosion predictions in the Portrane area. It is highlighted that future impacts of coastal erosion in this area are highly dependent on the coastal erosion protection measures being installed (report dated 13/07/2023).

Parks and Green Infrastructure Division: Condition recommended (report dated 03/11/2023).

Transportation Planning Section: No objection subject to conditions (report dated 27/10/2022).

3.3.3. Prescribed Bodies

Irish Water: Further information requested (24/11/2022) regarding feasibility of connection to public wastewater infrastructure. A subsequent report (23/6/23) stated no objection, subject to condition, including that the applicant sign a connection agreement with Uisce Eireann and adhere to standards and conditions set out.

3.3.4. Third Party Observations

None received.

4.0 Planning History

4.1. Appeal Site

F22A/0495: Demolition of dwelling and construction of a new dwelling (accompanied with a NIS) deemed as an invalid planning application by the PA.

F21A/0684: Demolition of dwelling and construction of a new dwelling (accompanied with a NIS), refused on grounds that it would contravene objective RF42 of the Development Plan 2017-2023 (replacement of existing coastal chalets with dwellings resided in year-round), sightlines, inadequate private amenity space, wastewater and surface water treatment.

4.2. Surrounds

F23A/0393: Replacement of a previous mobile home with dwelling and associated works, refused on the grounds that it would contravene objective RF42 of the Development Plan 2017-2023 (replacement of existing coastal chalets and seaside huts with dwellings resided in year-round), insufficiently demonstrated that it may be carried out without undue negative impacts on the coastline or exacerbate requirements for coastal defence works in the area and the substandard nature of accommodation provided. A first party planning appeal submitted (Reference ABP-318104-23) was declared invalid (late).

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 'RU' - 'protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape and the built and cultural heritage'. Residential use is 'permitted in principle' on lands zoned 'RU'.
- 5.1.3. The site is located within an area designated 'Highly Sensitive Landscape' and no designations with respect to ecology or archaeology are attached to the site.
- 5.1.4. Council's policy and objectives that are relevant to the consideration of this appeal include: Replacement of chalets - Section 3.5.15.11, Policy SPQHP57, Objectives SPQHO100, DMSO47; Coastal Management - Section 5.5.7, Objectives GINHO76; New Development in Coastal Areas and Coastal Erosion - Section 14.18.4, Objectives DMSO163; Establish a Coastal Monitoring Programme GIM8; Flood Risk - Policy IUP12, DMSO212, DMSO215; and Sensitive Areas - Objectives GINHO58, GINHO59.

Replacement of Chalets

Policy SPQHP57

The replacement or conversion of existing coastal chalets and seaside huts by dwellings which can be resided in all the year round will only be considered in exceptional circumstances.

Objective DMSO47: Seasonal Chalets and Seaside Huts

Applications for the replacement or conversion of existing seasonal chalets and seaside huts by dwellings which can be resided in all the year round will only be considered in exceptional circumstances where the following criteria is fully complied with:

- Verifiable documentary evidence is demonstrated indicating the unit is occupied on a year-round basis and has been for a period of 7 years or more.

- The proposal satisfies planning criteria in relation to appropriate design and layout, drainage, access and integration with the character of the landscape.
- The site shall not be liable to the impacts of climate change, including coastal erosion and flooding.
- It can be demonstrated that no impacts arise, including accumulative impacts, in relation to European Sites.

Objective SPQHO100: Replacement of Chalets and Seaside Huts

Proposals to replace or convert existing coastal chalets and seaside huts by dwellings which can be resided in all the year round will only be considered in exceptional circumstances and where all Development Management Standards set out in Chapter 14 in relation to such applications are complied with.

Coastal Erosion

Objective DMSO163: Coastal Erosion

Prohibit new development outside urban areas within the areas indicated on Green Infrastructure Maps, which are within 100m of coastline at risk from coastal erosion, unless it can be objectively established based on the best scientific information available at the time of the application, that the likelihood of erosion at a specific location is minimal taking into account, inter alia, any impacts of the proposed development on erosion or deposition and the predicted impacts of climate change on the coastline.

Flooding

Objective DMSO212: OPW Flood Risk Management Guidelines

... to require site specific flood risk assessments be considered for all new developments within the County. All development must prepare a Stage 1 Flood Risk Analysis and if the flooding risk is not screened out, they must prepare a Site-Specific Flood Risk Assessment (SSFRA) for the development, where appropriate.

Objective DMSO213: Implementation of the SFRA

Implement and comply fully with the recommendations of the SFRA prepared as part of the Fingal Development Plan 2023–2029.

Objective DMSO215: Precautionary Principle and Flood Risk

Require all developments in the County to be designed and constructed in accordance with the Precautionary Principle as detailed in the OPW Guidelines and to minimise the flood risk in Fingal from all potential sources of flooding as far as is practicable, including coastal, pluvial, fluvial, reservoirs and dams, and the piped water system.

5.2. Sustainable Rural Housing – Guidelines for Planning Authorities

These guidelines state that development plans should facilitate the housing need of the rural community while directing urban generated housing to settlements. The guidelines go on to state that the housing requirements of persons with a link to the rural area should be facilitated in the area it arises subject to normal siting and design requirements.

5.3. National Planning Framework

National Policy Objective 19 of the National Planning Framework (NPF) states the following in relation to one-off rural housing in the countryside:

Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e., within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory

guidelines and plans, having regard to the viability of smaller towns and rural settlements.

- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements

In respect of Coastal Environment and Planning for Climate Change the following National Policy Objectives (NPOs) are stated; ensure that Ireland's coastal resource is managed to sustain its physical character and environmental quality (NPO 41a) and, in line with the collective aims of national policy regarding climate adaptation, to address the effects of sea level changes and coastal flooding and erosion and to support the implementation of adaptation responses in vulnerable areas (NPO 41b).

5.4. Natural Heritage Designations

The appeal site is not located within any designated Natura 2000 site or Natural Heritage Area. Rogerstown Estuary is the nearest Natura 2000 site with overlapping Special Protection Area (SPA) (004015), Special Area of Conservation (SAC) (000208) and Proposed Natural Heritage Area (000208) designations, a distance of approximately 180 metres east and 285 metres west of the proposed development.

5.5. EIA Screening

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

6.0 The Appeal

6.1. Grounds of Appeal

A First Party Appeal has been received from Ms. Elaine Scanlon ('the appellant') in relation to the PA's decision to refuse permission. The appellant does not accept the PA's determination and reasons for refusal and a summary on the grounds of appeal is provided below.

6.1.1 The existing dwelling, classified as a seaside hut in the FDP has been permanently occupied by the applicant for at least 13 years. It's proposed replacement is to improve the applicant's standard of living and the energy performance of their home.

6.1.2 Applicant complies with all required criteria in replacing this structure with a permanent dwelling including -

- Verifiable documentary evidence demonstrating occupation on a year-round basis for a period of seven years, or more was provided to the Council's satisfaction.
- Design and layout, drainage, access, and integration with the character of the landscape to the Council's satisfaction.
- A Coastal Erosion report was submitted.
- No impacts on European Sites demonstrated to the Council's satisfaction.

6.1.3 One item in the required criteria was not accepted by the PA i.e. "that the site is not liable to coastal erosion and flooding", however it is argued that; -

- The site is not within 100 metres of vulnerable coastline (as mapped by the Council) with 100 metres being the limit for restrictions on development set out within objective DMS047 of the FDP
- Restrictions only apply to new housing within 100 metres of vulnerable coastline, proposal is for a replacement dwelling within an existing developed area and therefore, the need for coastal defence is not exacerbated
- The description "proximity to an area" within 100 meters of a coastline at risk of erosion is unclear and is not defined within the FDP
- Existing house is 180 metres from the shore with multiple (15 number) existing permanent dwellings between it and the shoreline. The extent to which the

development could negatively impact the shoreline or exacerbate the need for coastal defence works is unclear.

- A response was given to previous reasons for refusal (F21A/0684) and to new items of additional information sought in this application. The requirement to demonstrate *“that the development as proposed may be carried out without undue negative impacts on this vulnerable coastline”* was not previously raised on this site and was not required on a recently permitted site on the same coastline.
- To demonstrate effects of the replacement dwelling on erosion, given separation distance from the Coastal Erosion Risk Assessment’s worst-case scenario for 2100 and its siting, within an existing developed area would be extremely difficult.
- Inconsistencies in the Council’s decision making are highlighted and responses seen as contradictory and unclear, with conclusions unsatisfactory.
- The Coastal Erosion Report provided concludes that *‘following a comprehensive review of the available coastal erosion datasets relevant to the proposed development location... that the development site will not be susceptible to coastal erosion’*, taking into account a worst-case scenario that the coast will retreat 33 metres by the year 2100’.
- The PA’s conclusion that the future impacts of coastal erosion are highly dependent on coastal erosion protection measures is refuted and the report submitted makes no reference to the protection scheme.
- The Rogerstown Coastal Flood Erosion Risk Management Study from 2020 (commissioned by FCC) was not referenced in the submitted Coastal Erosion Assessment given that the site is ‘well outside the 100m zone of vulnerable coastline’ described in the current FDP, guidance and given the number of permanent existing dwellings between the proposed site and the coast.
 - Permission was granted for a separate application with a similar report, without reference to this study (Planning Reference F22A/0444).
 - Notwithstanding, an updated Coastal Erosion Risk Assessment Report, which takes into account this Study (2020) accompanies the appeal, and concludes that the site will not be susceptible to coastal erosion.

6.2. **Planning Authority Response**

A response has been received from the PA dated 05/08/2023 which states that the PA has no further comments to make and requests that An Bord Pleanála upholds its decision. It further requests that the Council's Section 48 Development Contribution Scheme be applied in the event of permission being granted.

7.0 **Assessment**

I am generally satisfied and concur with the PA in terms of siting and design that the proposal will not interfere with any views towards the sea or be out of character with the pattern of development in the area by reason of its siting, scale, massing, or height. Furthermore, I am generally consistent with the PA's conclusions on traffic safety and public health. In this context and having examined the application details and all other documentation on file, including the first party appellant's submission (the subject matter of this appeal), site inspection and having regard to the relevant policies, objectives and guidance, I am satisfied that the main issues to be considered are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise.

The main issues in determining this appeal are as follows:

- Principle of Development - Replacement of coastal chalet with a dwelling
- Flooding
- Coastal Zone Management
- Other Matters (Material Contravention)

7.1. **Principle of Development - Replacement of coastal chalet with a dwelling**

Compliance with adopted policy and objectives contained within the operative Development Plan is a key consideration for any planning application for a dwelling house in a rural area. I note that this matter is cited as a primary issue in the grounds of appeal made by the appellant in respect of the subject case and the PA's reason for refusal, being that the proposal would contravene materially Objective DMSO47 of

the FDP, if permitted. There are two issues included within the PA's reason for refusal on this ground, notably that the applicant failed to demonstrate to the PA's satisfaction that 'exceptional circumstances' present in this application and secondly, that the applicant failed to comply with all specified criteria required under Objective DMSO47 'including that the site shall not be liable to the impacts of climate change, including coastal erosion and flooding'.

7.1.1 In the first instance and in examining a requirement on the applicant to demonstrate 'exceptional circumstances', I note that it is the policy of the Council that *"the replacement or conversion of existing coastal chalets and seaside huts by dwellings which can be resided in all the year round will only be considered in exceptional circumstances"* (policy SPQHP57). Whilst the PA included 'exceptional circumstances' within the stated reason for refusal, I also note that details in this regard were not explicitly sought within the PA's request for further information on this application.

Section 3.5.15.11 of the plan states that a replacement will only be considered in exceptional circumstances where the criteria set out in Chapter 14 Development Management Standards is fully complied with, and Objective SPQHO100 provides that such a scenario will only be considered in exceptional circumstances and where all Development Management Standards set out are complied with.

I have examined the FDP in its entirety and a definitive definition on 'exceptional circumstances' in terms of replacement of such a structure is not provided within the plan. I note that the applicant is a daughter of the landowner, with a portion of the site in the ownership of an adjacent landowner. Documentation provided by the applicant includes written correspondence issued by revenue (2014-2022), car insurance (2014-2021) and tv package (2015-2022) all with confirmation of applicant's address at this site. Applicant's Banking & credit union statements (2014-2020/2020-2022) were also provided. I note that the stated reason for the proposed replacement of this structure is stated is to improve the applicant's standard of living and the energy performance of their home. Whilst noting that this supporting documentation submitted by the applicant satisfactorily demonstrated that they resided at this structure for a period of 13 years (i.e. in excess of 7 years) as required under Objective DMSO47, I consider that further details in substantiating the applicant's 'exceptional circumstances' for the proposed development as outlined in policy SPQHP57 and Objective SPQHO100 is not sufficiently addressed. Accordingly, I am of the view that whilst the applicant has

resided within this chalet for the requisite timeframe in allowing consideration of its replacement with a dwelling to be occupied on a year-round basis, I am not satisfied, based on details provided, that the applicant has demonstrated exceptional circumstances to warrant the principle of such development on this site acceptable.

7.1.2 In the second instance, with regard to the applicant's compliance with all specified criteria required under Objective DMSO47, I note that this objective sets out 4 criteria to which the applicant is required to demonstrate compliance, notably; -

- *'Verifiable documentary evidence is demonstrated indicating the unit is occupied on a year-round basis and has been for a period of 7 years or more.*
- *The proposal satisfies planning criteria in relation to appropriate design and layout, drainage, access and integration with the character of the landscape.*
- *The site shall not be liable to the impacts of climate change, including coastal erosion and flooding.*
- *It can be demonstrated that no impacts arise, including accumulative impacts, in relation to European Sites'.*

In considering the content of the PA's planning officer's report and the PA's subsequent reason for refusal, I submit that the PA were satisfied that the applicant demonstrated compliance in terms of requirements on occupation (7 years or more), design, technical requirements, integration with the character of the landscape, and appropriate assessment and I am generally satisfied with same.

Accordingly, and as outlined by the appellant in their appeal, the PA's reason for refusal relates to unsatisfactory details provided in regard to one listed criterion, being that 'the site shall not be liable to the impacts of climate change, including erosion and flooding'. I wish to highlight to the Board that this criterion is of relevance to the grounds of the PA's second reason for refusal and I therefore propose to consider this matter in conjunction with matters raised regarding 'impacts on this vulnerable coastline' and exacerbating requirements for coastal defence works under paragraphs 7.2 Coastal Zone Management and 7.3 Flooding below.

7.2. **Coastal Zone Management.**

The Development Plan plays an important role in restricting development in areas that are at risk of flooding or coastal erosion and protecting the natural landscape. Section

9.7.1 of the FDP outlines that *'as a general principle, development in coastal areas should be accommodated wherever possible in previously developed areas before consideration is given to development in greenfield site'*. I submit that the site with an established residential use, albeit defined as a chalet/seaside hut, is located on lands zoned 'RU' Rural whereby residential use is 'permitted in principle' and note that a designated 'HA' - High Amenity zoning applies to lands beyond the site and established residential development in its immediate vicinity. I further note that with respect to the coastline to the east of this site, that the PA has a stated objective to establish a coastal monitoring programme to provide information on coastal erosion on an ongoing basis (Objective GIM8) and that the preparation of a Framework Plan for Portrane, including The Burrow (FP 7.B) is proposed to be undertaken by the PA over the lifetime of the development plan.

7.2.1 Coastal Erosion

It is important to highlight that the FDP, adopted in the months preceding the PA's decision on this application, contains up-to-date mapping and locally adopted policy and objectives with respect to coastal erosion, based on current information and experience. The area identified as being at risk of coastal erosion is delineated on the PA's mapdata as being all lands within 100m of the coastline and Objective DMSO163 - Coastal Erosion of the FDP is clear in stating its applicability to the identified area within 100 metres of the coastline only.

In terms of coastal erosion (and flooding), the PA's reasons for refusal in this instance pertain firstly to the site itself, notably that it; -

'shall not be liable to the impacts of climate change, including erosion and flooding' (contained within refusal reason 1)

and secondly, to its location, in proximity *to an area within 100m of a coastline at risk of coastal erosion*, whereby

it was not demonstrated that the proposal may be carried out without undue negative impacts on *'this vulnerable coastline'* or *'exacerbate requirements for coastal defence works in the area over the lifetime of the development'* (refusal reason 2).

In examining these reasons of refusal with regard to coastal erosion, I wish to bring the following to the Board's attention:

The First Party have argued that their Coastal Erosion Risk Assessment did not rely upon coastal erosion protection measures being installed. The site has an established residential use and its siting is within an envelope of established residential development, on the western side of the serving road (Beach Lane), with a number of permanent residential dwellings on the seaward (eastern) side opposite this site and closer to the coast.

The updated Coastal Erosion Risk Assessment Report (August 2023) which accompanies this appeal incorporates the findings of the Council's commissioned Rogerstown Coastal Flood and Erosion Risk Management Study - Technical Report (July 2020) (CFER) which takes account of erosion rates (and storm events) for the Burrow area in the preceding years and includes two climate change scenarios (Mid-Range Future Scenario (MFRS) and High-End Future Scenario (HEFS)). The submitted report outlines that the predicted 2100 coastal erosion rates and coastal retreat as a consequence of erosion does not impinge on the appeal site, and that in consideration of HEFS, a buffer of 123m exists between the predicted erosion line and the eastern boundary of the appeal site.

In reviewing the available information contained within the CFER study and the content of the updated Coastal Erosion Risk Assessment Report, it is evident that the site lies outside of the 100m area of coastline identified as being at risk from coastal erosion, with a separation distance from the coastal vegetation line of circa 179 metres and a distance of circa 123m from the 2100 predicted coastline as delineated within the Local Authority commissioned 2020 study.

Furthermore, I note the views of the PA's Water Services Section (Coastal Erosion Division) which are referenced within the PA's Planning Report regarding future impacts of coastal erosion in this area being highly dependent on the coastal erosion protection measures installed. However, I consider that the terminology used by the PA in its reason for refusal by virtue of the site's 'proximity' to an area identified as at risk of erosion extends beyond the requirements of adopted local policy and objectives set out in the development plan.

In relation to likely impacts of climate change, the appeal makes the point that the applicant was not requested as part of the PA's further information request to demonstrate how the development would be carried out without undue negative effects on the coastline.

Having regard to these factors and in examining all documentation, including the PA's mapdata on coastal erosion and the land zoning objective pertaining to this site, I consider that the proposed development, by virtue of its siting and pattern of development in the area will not 'exacerbate requirements' or interfere with coastal defence works over the lifetime of the development.

7.2.2 Coastal Flooding

The PA in their reason for refusal referenced that the site shall not be liable to the impacts of climate change, including flooding. I submit that the relevant CFRAMS mapdata for this area is currently under review and I note that the PA's Water Services Section expressed no objection to flood risk in regard to the proposed development. However, having considered available mapdata provided in respect of the Strategic Flood Risk Assessment (SFRA) which was undertaken in preparation of the current FDP and the data provided on Green Infrastructure 3, Sheet No. 16, I wish to highlight to the Board that the site is encompassed within an area identified as being at risk of Coastal Flooding (1:200 event) (Flood Zone A and Flood Zone B).

Section 28 ministerial guidelines on Flood Risk Management for PA's classify a dwelling house as a 'Highly Vulnerable Development'. I further note that the SFRA refers to zoned lands within the Portrane area which are at risk of flooding and recommends that an appropriately detailed FRA and Justification Test, be submitted, where applicable (Section 5.2.21). I therefore express concerns that a Site-Specific Flood Risk Assessment (FRA) does not accompany this application and that appropriate data and information taking the likely impacts of climate change into account has not been provided which demonstrates that the proposal will not be liable to coastal flooding. The guidelines state that a precautionary approach should be applied, where necessary, to reflect uncertainties in flooding datasets and risk

assessment techniques and the ability to predict the future climate and performance of existing flood defences.

Accordingly, in noting that the PA's inclusion of flooding within their stated reason for refusal related to climate change, pending the outcome of the CFRAMS review, I concur and am of the view that the development proposed should be refused, as it has not been demonstrated that the proposed development will not be at risk of flooding or give rise to flooding either within or outside the application site both now and in the future. The development would therefore be contrary to stated objectives within the FDP requiring the undertaking of FRA, applying the precautionary principle in the design of developments and implementing & complying with the recommendations of the SFRA.

7.3. Other Matters (Material Contravention)

The PA in its refusal reason put forward that the proposal will materially contravene the Fingal County Development Plan 2023-2029, on the grounds that the proposed development does not comply with Objective DMSO47 of the Development Plan, which requires that applications for the replacement existing seasonal chalets and seaside huts by dwellings which can be resided in all the year round will only be considered in exceptional circumstances where the applicant is fully compliant with stated criteria.

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.

- i. the proposed development is 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, or
- 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

- 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.

Having regard to the above provisions I see no validity in this appeal which necessitates a material contravention to the CDP for the following reasons:

- i. The development of a single rural dwelling is not considered to be of strategic or national importance.
- ii. There are no conflicting objectives in the development plan and the objectives are clearly stated, insofar as the proposed development is concerned.
- iii. The proposal, located on lands that are zoned 'RU'- Rural is identified in the Strategic Flood Risk Assessment which accompanies the CDP as being at flood risk (1:200 Coastal Flooding) Flood Zone A and Flood Zone B. Section 28 Guidelines - The Planning System and Flood Risk Management Guidelines for Planning Authorities, November 2009, classify a dwelling house as a 'Highly Vulnerable Development' and accordingly, to permit this development in the absence of a Site Specific Flood Risk Assessment would be contrary to these guidelines, noting that Section 5.24 of the guidelines outline that permission should be refused where flood issues have not been addressed successfully and where the presence of unacceptable residual flood risks remain and that development which is consistent with the overall policy and technical approaches of the Guidelines only should be permitted.
- iv. 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.

Based on this assessment, it is my opinion that a material contravention is not warranted in this instance.

7.4. Appropriate Assessment

7.4.1 Context

The Board is advised that the applicant submitted a screening report for Appropriate Assessment entitled 'Appropriate Assessment Screening Report for Burrow House, Portrane, Co. Dublin' (issue date 29/11/2021) and a Natura Impact Statement entitled 'Natura Impact Statement Provision of Information for Appropriate Assessment for Proposed Works at Burrow House, Portrane, Co. Dublin' (issue date 29/11/2021) as part of the planning application to the PA. An updated NIS (issue date 15/05/2023) was submitted in response to the PA's request for further information and informed the PA's determination on appropriate assessment for this case.

I also wish to highlight that correspondence was received on this application regarding connection to the public sewer network. Accordingly, I have undertaken a screening for appropriate assessment on the basis that foul sewer water generated on this site will be connected and discharged to an existing public network system.

7.4.2 Compliance with Article 6(3) of the Habitats Directive

The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

The Habitats Directive deals with the Conservation of Natural Habitats and of Wild Fauna and Flora throughout the European Union. Article 6(3) of this Directive requires that any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. The competent authority must be satisfied that the proposal will not adversely affect the integrity of the European site before consent can be given.

The proposed development at Portrane, comprising the replacement of a chalet with a dwelling house, is not directly connected to or necessary to the management of any European site and therefore is subject to the provisions of Article 6(3).

7.4.3 Appropriate Assessment - Screening

The report 'Appropriate Assessment Screening Report for Burrow House, Portrane, Co. Dublin' sets out reference to stage 1 screening undertaken for the proposed development. The applicant's Stage 1 Appropriate Assessment screening applied the precautionary principle and concluded that it could not rule out conclusively habitat degradation/effects on QI habitats and SCI species as a result of hydrogeological impacts and consequently, that the proposal has the potential to affect the conservation objectives supporting the qualifying interest/special conservation interests of a European site(s). It therefore, concluded the need to progress to Stage 2 and prepare a Natura Impact Statement (NIS).

No accompanying reports in terms of Construction Environment Management Plan or Ecology reports are attached to this application. I note all the information in on file and therefore available for my appropriate assessment screening.

The applicant's **Stage 1 AA Screening Report** was prepared in line with current best practice guidance and provides a description of the proposed development and identifies European Sites within a possible zone of influence of the development.

The report outlines that the proposed development does not overlap with any European site(s), the nearest being Rogerstown Estuary SAC and Rogerstown Estuary SPA, a distance of approximately 180m east at the closest point to this site.

The author's identified potential zone of influence includes all 16 European Sites within 15-kilometres of the site and SPAs which include SCI bird species that may occur within the Rogerstown Estuary located within a 20km radius of the site. The author's stated reason for the 20km radius is due to wading bird species routinely travelling up to 20km between roosting and foraging sites and therefore South Dublin Bay & River Tolka Estuary SPA (004024) c.16.8km southwest and River Nanny Estuary & Shore

SPA (004158) c.17.8km northwest were considered relevant and within the zone of influence given their designation for SCI bird species that occur in the Rogerstown Estuary.

The Screening Report states that there is no direct surface water hydrological link between the proposed development site and these European sites, however it further references that surface waters drain underground from the site, ultimately discharging into the Rogerstown Estuary and the Irish Sea.

There are no surface water features within the proposed development site, with the closest surface water feature Ballyboghil_010, approximately 670m southwest of the site. The Irish Sea is c.280 metres east of the site. The proposed SW network drainage discharges into the existing surface water network draining the current site.

The site is underlain by locally important aquifer bedrock which is moderately productive only in local zones and is of 'High' vulnerability and is within the 'Swords' groundwater body (GWB), classified by the EPA as having 'good status' for the 2016-2021 WFD monitoring period.

Baseline and field surveys were undertaken in October 2021.

The submitted Screening report states that overall, the habitats located within the footprint of the proposed development have limited ecological value, within no Annex 1 species, no protected plant species contained within the Flora (Protection) Order, 2022, rare plant species contained within Ireland Red List No. 10 Vascular Plants or species listed on Ireland's Red List No. 8.

The applicant's AA Screening Report concluded that -

'following an examination, analysis and evaluation of the best available information, and applying the precautionary principle, it can be concluded that there is the possibility for significant effects on the following European sites, either arising from the project alone or in combination with other plans and projects, as a result of habitat degradation/effects on QI habitats and SCI species as a result of hydrogeological impacts. Rogerstown Estuary SAC, Rogerstown Estuary SPA, Malahide Estuary SPA, Lambay Island SPA, Skerries Islands SPA, Baldoyle Bay SPA, North Bull Island SPA, South Dublin and River Tolka Estuary SPA, and River Nanny Estuary and Shore SPA.

In reaching this conclusion, the nature of the project and its potential relationship with all European sites within the zone of influence and their conservation objectives, have been fully considered.

Therefore, it is the professional opinion of the authors of this report that the application for consent for the proposed development does require an appropriate assessment and the preparation of a Natura impact statement'.

7.4.4 Test of likely significant effect

The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Taking account of the characteristics of the proposed development in terms of its location and the scale of works, the following issues are considered for examination in terms of implications for likely significant effects on European sites:

- Habitat loss/ fragmentation/alteration
- Habitat degradation as a result of hydrological impacts.
- Disturbance and displacement impacts on QI/SCI
- Changes in water quality and resource.

Given the nature and scale of the proposed development, connection to public sewer, the lack of a direct hydrological connection, the dilution provided, and the distances involved, I consider the following Natura 2000 sites to be within the Zone of Influence, Rogerstown Estuary SAC (000208) and Rogerstown Estuary SPA (004015). In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site.

I do not consider that any other European sites fall within the zone of influence of the project based on a combination of factors including the nature and scale of the project, the distance from the site to European sites, and any potential pathways which may exist from the development site to a European site, aided in part by the applicant's Appropriate Assessment Screening Report for Burrow House, Portrane, Co. Dublin' (issue date 29/11/2021), the conservation objectives of Natura 2000 sites, the lack of suitable habitat for qualifying interests, as well as by the information on file and I have also visited the site.

- Rogerstown Estuary SAC (000208)

QI's/SCI's

1130 Estuaries

1140 Mudflats & sandflats not covered by seawater at low tide

1310 Salicornia and other annuals colonising mud and sand

1330 Atlantic salt meadows

1410 Mediterranean salt meadows

2120 Shifting dunes along the shoreline

2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)

- Rogerstown Estuary SPA (004015)

QI's/SCI's

1140 Mudflats & sandflats not covered by seawater at low tide

1310 Salicornia and other annuals colonising mud and sand

1330 Atlantic salt meadows

1410 Mediterranean salt meadows

2120 Shifting dunes along the shoreline

2130 Fixed coastal dunes with herbaceous vegetation (grey dunes).

i. Habitat loss/ fragmentation/alteration

There are no European site(s) at risk of direct habitat loss/fragmentation or alteration impacts given that the proposed development does not overlap with the boundary of any European site. The site does not support populations of any fauna species linked with the QI/SCI populations of any European site(s),

ii. Habitat degradation as a result of hydrological impacts.

Surface water from the proposed development will drain to the existing underground surface water network which discharges into coastal waters of the Irish sea, c.180 metres east of the site, within which Rogerstown Estuary SAC and Rogerstown Estuary SPA are located. Currently, the treatment/discharge of wastewater generated on this site is via an on-site wastewater system. In accordance with correspondence received from Uisce Eireann on this case, should permission be granted for the proposed development, it shall be conditioned that the proposed development connects to the public sewer. Therefore, there will be no direct wastewater charge arising from this development into surface or groundwater(s).

The submitted Stage 1 report identifies potential pathways/connections between the application site and the Rogerstown Estuary SAC/SPA and Irish Sea via surface water runoff and/or accidental spillage or pollution event into any surface water features during construction which has the potential to affect water quality in the receiving aquatic environment. Having assessed all information available, I consider that the potential for indirect impacts are unlikely given the nature and scale of the development, distance between the site and Rogerstown Estuary SAC/SPA and dilution rate between this site and the Rogerstown Estuary SAC/SPA, and that wastewater generated will discharge to public sewer. Disturbance related impacts are unlikely given the lack of habitats on site suitable for Qualifying Interests, no ex situ impacts given the location and context of the site. Further, I am of the view that the matter of accidental pollution at construction stage can be addressed by way of incorporating best practice measures at construction stage as opposed to mitigation measures should the Board be of a view to grant permission.

iii. Disturbance and displacement impacts on QI/SCI

Having assessed all information available, I am of the view that the proposal, if permitted would not result in the disturbance/displacement of the Qualifying/Special Conservation Interest species of any European site for the following reasons,

- The scale and nature of the works are small and localised and construction stage works are short-term.
- The intersecting area of Rogerstown Estuary SPA (which is within 330m of the proposed development is not a known roosting site or as an important foraging area for any over-wintering SCI species.
- The site and lands in immediate proximity provide no suitability for nesting of foraging SCI species.
- The site is located within an area where anthropogenic activities are ongoing.

iv. Changes in water quality and resource.

As stated above, given the nature and scale of the development, with no direct hydrological connection to a European site, connection to public sewer network and in applying best practice principles at construction stage, I consider that the proposal would not give rise to changes in water quality and resource, either individually or cumulatively.

7.4.5 Mitigation measures

No measures designed or intended to avoid or reduce any harmful effects of the project on a European Site have been relied upon in this screening exercise.

7.4.6 Determination

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 of the project, it has been concluded that there is no potential for significant effects on the Rogerstown Estuary SAC (000208) and Rogerstown Estuary SPA (004015) as a result of the project individually or in

combination with other plans or projects and can be excluded in view of the Conservation Objectives of these sites, and Appropriate Assessment is therefore not required.

Notwithstanding the submission of an NIS, in order to facilitate the Board in carrying out an Appropriate Assessment, I consider that the particular characteristics of the project for which permission is being sought in the current application, including its nature, scale and location on a fully serviced site are such that it would not be likely to have a significant effect on any Natura 2000 site, either individually or in combination with other projects. This exclusion can be made in view of the objective information set out in the application and this report. It is therefore reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on Rogerstown Estuary SAC (000208) and Rogerstown Estuary SPA (004015) or any other European site(s), in view of the sites' Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required. In reaching this conclusion, I took no account of mitigation measures intended to avoid or reduce the potentially harming effects of the project on any European Sites.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. Having regard to the physical nature and characteristics of the existing structure, detailed in the plans and particulars submitted with the application, it is considered that the proposed development relates to the replacement of an existing chalet with a permanent residential dwelling. Accordingly, in the absence of sufficient documentary evidence which demonstrates that exceptional circumstances exist

which warrant such development, to permit the development as proposed at this time would be contrary to policy SPQHP57, Objective SPQHO100 and Objective DMSO47 of the Fingal County Development Plan 2023-2029, would set an undesirable precedent for similar development of this type in the vicinity and would be contrary to the proper planning and sustainable development of the area.

2. The proposed development is in an area which is deemed to be at risk of coastal flooding (Flood Zone A and Flood Zone B), by reference to the current Fingal County Development Plan 2023-2029 and accompanying Strategic Flood Risk Assessment. Accordingly, in the absence of adequate information and analysis relating to the risk of flooding and appropriate mitigating measures to address any such risk, and the likely impacts of climate change, the proposed development if permitted, would be contrary to Objective DMSO212, Objective DMSO213 and DMSO215 of the Fingal County Development Plan 2023-2029 and would, therefore, be contrary to the proper planning and sustainable development of the area.

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

Paula Hanlon
Planning Inspector
11 March 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	317770-23		
Proposed Development Summary	Demolition of dwelling and construction of a replacement dwelling. Natura Impact Statement (NIS) lodged with application.		
Development Address	Hollybush, Beach Lane, The Burrow, Portrane, Co. Dublin, K36 Y338		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)	Yes	X	
	No		
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			EIA Mandatory EIAR required
No	X		Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
			Conclusion
No			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	317770-23	
Proposed Development Summary	Demolition of dwelling and construction of a replacement dwelling. Natura Impact Statement (NIS) lodged with application.	
Development Address	Hollybush, Beach Lane, The Burrow, Portrane, Co. Dublin, K36 Y338	
<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 comprises an existing chalet structure which is in habitable use. The site on lands zoned RU Rural. The proposed development is not exceptional in the context of 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 regard to other existing</p>	<p>No. The site area is.108ha.</p> <p>There are no other developments under construction in proximity to the site. All other developments are established uses.</p>	No

and/or permitted projects?		
<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>No. The proposed development is not within a designated Natura 2000 site.</p> <p>Rogerstown Estuary is the nearest Natura 2000 site with overlapping SPA(004015) and SAC(000208) designations to east and west of this site, a distance of 180 metres from its nearest point to this site.</p> <p>There are no other locally sensitive environmental sensitivities in the vicinity of relevance.</p>	No
Conclusion		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

Inspector: _____

Date: _____

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)