



An  
Bord  
Pleanála

## Inspector's Report

**ABP-317839-23**

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<b>Development</b>	Construction of new detached dwelling.
<b>Location</b>	1 Oakleigh Court, Malahide, Co. Dublin, K36 XC99
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F23A/0300
<b>Applicant(s)</b>	Gavin Brazel
<b>Type of Application</b>	Full Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Gavin Brazel
<b>Observer(s)</b>	Dublin Airport Authority
<b>Date of Site Inspection</b>	27 <sup>th</sup> November 2023
<b>Inspector</b>	Tony Ewbanks

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## **1.0 Site Location and Description.**

- 1.1. The appeal site is located in Oakleigh Court to the south-east of Malahide, Co. Dublin. The site sits approximately 80m north-east of the signalised junction between the Dublin and Swords Roads and the rear entrance to Malahide Castle and Demesne. This section of the Dublin Road is dominated by large mature trees on either side providing an enclosed 'streetscape' of boundary walls, fences, hedgerows and planting. A single footpath runs along the Dublin Road's north-western side and parallel with the appeal site's side boundary. A section of grass verge on the opposite side of the Dublin Road running parallel with the Castle boundary was recently replaced with concrete and kerbing providing c.1.0m wide. The new surfacing connects to the 'footpath' extending from the Castle entrance northwards and terminates opposite the entrance to Oakleigh Court.
- 1.2. No. 1 Oakleigh Court is the first of 10no. detached dwellings accessed via a shared vehicular entrance. Each of the dwellings is two storeys and retains a similar design and general appearance despite extensions and modifications carried to various houses out over the years. The only exception to Oakleigh Court's general grain of development 'Willowfield' (Eircode: K36 K231) which is single storey. The appeal site comprises of the Appellant's dwelling, front, side and rear garden areas and driveway. The two storey dwelling has a single storey, flat roofed extension to the side which the Appellant proposes demolishing to facilitate the proposed development.
- 1.3. The property's side and rear garden areas are defined by a low rubble stone wall and garden door facing onto the front garden, a low stone wall and timber panel fence along the side (south-east) boundary next to the public road and footpath and a concrete block wall and panel fencing along the rear (south-west) boundary.
- 1.4. The property's side and rear boundaries are also defined by a timber panel fence atop a low rubble stone wall to the south-east (side) and north-western (rear). A row of mature Leylandii trees, approximately 15m tall, run parallel with the side fencing. Several mature broadleaf trees sit at the rear of the existing back garden. The appeal site's Leylandii trees are comparable in size to the other Leylandii trees defining Oakleigh Court's roadside frontage as well as the side garden of No. 9

Oakleigh Court. Oakleigh Court's trees are comparable in height and foliage density to the Malahide Demesne's mixed broadleaf wood which sits opposite the appeal site.

- 1.5. To the side and rear of the Appellant's existing dwelling are two detached garden sheds and a tank which are to be removed to facilitate the proposed development.

## **2.0 Proposed Development.**

- 2.1. Demolition of a single storey side extension and outbuildings; construction of detached 3-bed, 2 storey dwelling; alterations to boundary treatment including removal of existing trees, soft landscaping including replacement boundary trees, new off street parking to front and associated site works.
- 2.2. The new, gable fronted dwelling will be separated from the exiting dwelling by a new c.2m high property wall or fence providing 195sqm. of private amenity space, including a 39.5sqm. patio. The existing vehicular entrance will continue to be used for access with the existing drive extended to provide space for an additional 2no. parked vehicles. The application also proposes removing the Leylandii trees along the appeal site's south-eastern (side) boundary and planting of an unspecified number and type of semi-mature trees. Submitted plans indicate the existing low rubble stone wall and timber panel fence are to remain in situ.
- 2.3. The development is a revised proposal from what was earlier refused under Reg. Ref F22A/0300.

## **3.0 Planning Authority Decision.**

### **3.1. Decision.**

- 3.1.1 Fingal County Council issued a Notification of Decision to Refuse on the 24<sup>th</sup> July 2023 citing the following two reasons:

1. *The proposed development would pose a significant constraint to the delivery of potential future improved cycling and pedestrian facilities on the R106 and potential future improved upgrade to the junction with the Swords Road, given the*

*location of the proposed dwelling adjacent to the R106. The proposed development is therefore considered to materially contravene Objective DMSO116 and be contrary to Objective CMO6 of the Fingal Development Plan 2023-2029 and would be contrary to the proper planning and sustainable development of the area.*

*2. The proposed development involves the removal of existing nature trees. Based on the information submitted, the Planning Authority is not satisfied that the proposed replacement planting is feasible and that the proposed development would comply with Objective GINHO23 of the Fingal Development Plan 2023-2029 which is to implement ‘The Forest of Fingal – A Tree Strategy for Fingal’ and that the development would provide at least equivalent replacement in terms of canopy cover. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports.**

#### **3.2.1. Planning Reports.**

- The Planning Authority’s (PA) report recommended refusal as set out in Chief Executive Officer’s (CEO) Decision Order No. PF/1587/23. No difference in recommendations or reasons for refusal between the planner and CEO decisions.

#### **3.2.2 Other Technical Reports.**

- Water Services – No objections subject to conditions.
- Transportation – Did not support proposed development in the submitted layout or form.
- Parks & Green Infrastructure – Requested Additional Information.
- Uisce Eireann (Irish Water) – No objection.
- Dublin Airport Authority – No objection submitted to conditions.

### **3.3. Prescribed Bodies.**

3.3.1 None.

### **3.4. Third Party Observations.**

3.4.1 None.

## **4.0 Planning History.**

4.1 F96B/0191 – Planning permission granted to Paul O'Reilly under appeal (ref. no. PL 06F.099561) on the 15<sup>th</sup> November 1996 to construct a stone faced side boundary wall.

4.2 F22A/0300 – Planning permission refused to Gavin Brazel on the 3<sup>rd</sup> August 2022 to demolish the existing single storey side/rear extensions and outbuildings and storage and the construction of a 3 bedroom, 2 storey high dwelling to the side of the existing dwelling, alterations to the boundary treatment soft landscape, new off street parking to the front through existing vehicular access, removal of existing trees to the side and replacement with new landscaping and all associated work.

## **5.0 Policy Context.**

### **5.1. National Policy.**

#### **The National Planning Framework (2018).**

5.1.1 The first National Strategic Outcome (NSO) expected of the NPF is compact growth and consolidation of existing urban areas by '*... making better use of under-utilised land and buildings, including 'infill', 'brownfield', publicly owned sites and vacant and under-occupied buildings ...*'.

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

5.1.2 The Guidelines provide definitions of infill and brownfield sites and actively encourages the development of unused or backland sites, derelict buildings or the sub-division of existing dwellings as a means of achieving consolidated/compact urban growth in appropriate locations. Section 5.9(i) of the Guidelines recognises such a design approach should be cognisant of the need '*... to protect the amenities of directly adjoining neighbours and the general character of the area and its amenities*'.

#### **National Cycle Design Manual (2023).**

5.1.3 The National Transport Authority's Manual sets out a variety of Typical Layouts (TL) for proposed and/or upgraded o-road and off-road cycle infrastructure in both urban and rural locations including minimum design and configuration requirements. It was adopted in September 2023 superseding the 2011 edition under which the planning application was considered.

## 5.2. Development Plan.

### Fingal Development Plan 2023-2029.

5.2.1 The Development Plan is the operative plan. The appeal site is zoned RS - Residential which seeks to provide for residential development and protect and improve residential amenity. The zoning's vision is to ensure that new development in existing areas has a minimal impact upon and enhance existing residential amenity. I consider the following policies and objectives to be relevant to the assessment of this appeal:

- **Objective SPQHO40 Development of Corner or Wide Garden Sites** - *Favourably consider proposals providing for the development of corner or wide garden sites within the curtilage of existing dwellings in established residential areas subject to the achievement of prescribed standards and safeguards set out in Chapter 14 Development Management Standards.*
- **Objective SPQHO42 Development of Underutilised Infill, Corner and Backland Sites** - *Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected.*
- **Objective DMSO31 Infill Development** - *New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings.*
- **Objective DMSO125 Management of Trees and Hedgerows** - *Protect, preserve and ensure the effective management of trees and groups of trees and hedgerows.*
- **Policy GINHP21 Protection of Trees and Hedgerows** - *Protect existing woodlands, trees and hedgerows which are of amenity or biodiversity value and/or contribute to landscape character and ensure that proper provision is made for their protection and management in line with the adopted Forest of Fingal-A Tree Strategy for Fingal.*



- **Objective GINHO23** – *Support and implement The Forest of Fingal-A Tree Strategy for Fingal, Keeping it Green – An Open Space Strategy for Fingal and Space for Play – A Play Policy for Fingal during the lifetime of the Development Plan.*
- **Objective GINHO46 Tree Removal** - *Ensure adequate justification for tree removal in new developments and open space management and require documentation and recording of the reasons where tree felling is proposed and avoid removal of trees without justification.*
- **Objective DMSO116 Provision of Building Setbacks** - *Seek to provide appropriate building setbacks along the road network to facilitate future road improvements.*
- **Objective CMO6 Improvements to the Pedestrian and Cyclist Environment** - *Maintain and improve the pedestrian and cyclist environment and promote the development of a network of pedestrian/cycle routes which link residential areas with schools, employment, recreational destinations and public transport stops to create a pedestrian/cyclist environment that is safe, accessible to all in accordance with best accessibility practice.*
- **Objective CMO13 Walking and Cycling Network and Tourist Trail** - *Support the formulation and delivery of integrated pedestrian/cycle network plans which connect adjacent communities providing linkages to all modes of transport which will provide links to all destinations of the County creating the nucleus of a slow tourist trail.*
- **Policy CMP1 Decarbonisation of Motorised Transport** - *Support the decarbonisation of motorised transport and facilitate modal shift to walking, cycling and public transport and taking account of National and Regional policy and guidance, while supporting an efficient and effective transport system.*
- **Policy CMP7 Pedestrian and Cycling Network** - *Secure the development of a high-quality, connected and inclusive pedestrian and cycling network and provision of supporting facilities / infrastructure across the County, including the upgrade of the existing network and support the integration of walking, cycling and physical activity with place making including public realm improvements, in*

*collaboration with the NTA, other relevant stakeholders, local communities and adjoining Local Authorities in the context of the impact of development schemes with cross boundary impacts and opportunities where appropriate. Routes within the network shall have regard to NTA and TII national standards and policies.*

- **Policy SPQHP35 Quality of Residential Development** – *Promote a high quality of design and layout in new residential developments at appropriate densities across Fingal, ensuring high-quality living environments for all residents in terms of the standard of individual dwelling units and the overall layout and appearance of developments. Residential developments must accord with the standards set out in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG 2009 and the accompanying Urban Design Manual – A Best Practice Guide and the Sustainable Urban Housing; Design Standards for New Apartments (DHLGH as updated 2020) and the policies and objectives contained within the Urban Development and Building Heights Guidelines (December, 2018). Developments should be consistent with standards outlined in Chapter 14 Development Management Standards.*

Forest of Fingal - A Tree Strategy for Fingal (2022-2032).

5.2.2 The Strategy defines a framework for the sustainable management of trees in Fingal to provide positive environmental impacts and enhancement of the County's green urban infrastructure. Delivery of a higher level of tree canopy cover is recognised as a means of enhancing and improving the quality of the County's streets, open spaces, parklands and waterways. The Strategy requires the location of tree planting in proximity to built features including footpaths must refer to BS5837:2012 *Trees in relation to design, demolition and construction – Recommendations*. Section 4.10 states where new tree planting is proposed it is essential to ensure a good design which '*... ensures the right tree in the right place*'. It states trees should be protected, maintained and enhanced as a resource to improve the quality of life for the citizens, visitors and workers of a resilient Fingal.

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

5.3.1 The appeal site is located c. 1.19km south-west of Malahide Estuary SPA (Site Code: 004025) and Malahide Estuary SAC (Site Code: 000205); c. 1.34km south-east of Malahide Estuary pNHA (Site Code: 000205); c. 3.3km north-west of North-West Irish Sea SPA (Site Code: 004236); c. 7.7m north-west of Ireland's Eye SPA (Site Code:004117); c. 8.01km north-west of Ireland's Eye SAC (Site Code: 002193), Ireland's Eye pNHA (Site Code: 000203) and Rockabill to Dalkey Island SPA (Site Code:00300); c. 3.8km north-west of Baldoyle Bay SAC (Site Code: 000199) and Baldoyle Bay pNHA (Site Code: 000199); c. 7.82km north-west of Howth Head SAC (Site Code: 000202) and Howth Head pNHA (Site Code: 000202); c. 7.1m north-west of Dublin Bay North SAC (Site Code:000206), North Dublin Bay pNHA (Site Code: 000206) and North Bull Island SPA (Site Code: 004006) and c. 10.8km north-west of Howth Head Coast SPA (Site Code: 004113).

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

5.4.1 The construction of 500 or more dwellings requires EIA under Section 5 of the Planning and Development Regulations 2001 (as amended). A proposal for one dwelling would be exempt from such a requirement. Given the nature and scale of the proposed development, its location within an urban setting and proposed connection to existing infrastructure there is no real likelihood of significant emissions or effects. The requirement for submission of an EIAR or carrying out of an EIA may be set aside.

## **6.0 The Appeal.**

### **6.1. Grounds of Appeal.**

- The planning application demonstrated how the proposed dwelling could be provided alongside provision of upgraded cycle and pedestrian pathways in accordance with the National Transport Authority's (NTA) 'National Cycle Manual'. Submitted plans showed the provision of a single cycle lane with overtaking space

each way, 6m wide traffic carriageway and a footpath single side of the road. The opposite side of the road alongside the Malahide Castle boundary wall has no pedestrian path at present.

- The Appellant is agreeable to a reasonable amount of sterilised zone on his lands without it compromising the ability to develop a new dwelling.
- The Planning and Strategic Infrastructure Department's reference and requirement to provide minimum setbacks to allow for a 1.5m wide cycle lane and 1.8m wide footpath are over and above the NTA's design requirements.
- The design criterion which is the basis of the first refusal reason is not outlined in the development plan and therefore is not valid. The future provision of public infrastructure can be reasonably integrated into a condition of permission.
- The second refusal reason is contrary to the aims of the policies used in the first refusal. Should the Council wish to provide the upgrade to the public infrastructure they would need to remove all the mature trees along the entire road including those on the Appellant's property. This reason must therefore be excluded from consideration. The proposal included for the planting of semi-mature trees to replace the mature trees that require removal. This could be upgraded to include more in number and age of tree type by way of a condition of planning.

## **6.2. Planning Authority Response.**

- The PA confirms its decision and has no further comment to make. They request their decision to refuse be upheld but in the event permission is granted the Board is requested to be mindful of applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

## **6.3. Observations.**

- The Dublin Airport Authority request, in the event of a grant of permission, a condition is attached requiring noise insulation to an appropriate standard, having regard to the location of the site within Noise Zone C of Dublin Airport thereby ensuring appropriate internal noise levels of habitable rooms in accordance with Fingal Development Plan Objective DAO11.

#### 6.4. Further Responses.

- None

### 7.0 Assessment.

7.1. The proposed development has been resubmitted following the refusal of an earlier application. In my opinion this application does not address the previous reasons for refusal or my own de novo considerations on the following issues:

- Potential Impact on the Existing Urban Form and Setting;
- Potential Impact on the Proposed Swords to Malahide Cycle Route;
- Viability and Potential Impacts of Proposed Replacement Trees; and
- Appropriate Assessment.

#### 7.2. Potential Impact on the Existing Urban Form and Setting.

7.2.1 The proposed development is consistent with the appeal site's RS – Residential zoning and national strategy seeking consolidate urban growth. The appeal site qualifies as an infill and brownfield site under the definitions provided in the 2009 Sustainable Residential Developments in Urban Areas Guidelines but note the PA's assessment did not considered the proposal within context of the criteria set out in Tables 14.3 and 14.4 of the Fingal Development Plan.

7.2.2 With regard to brownfield opportunities and regeneration I am satisfied the proposal is compliant with all of Table 14.3's design criteria except the first which requires new development to respect and enhance its context and to integrate with its surroundings. The proposal's high quality design and overall appearance are noted but do not compensate for how physically and visually conspicuous the new structure would be within the surrounding urban environs and setting.

7.2.3 The coniferous *Leylandii* trees along the appeal site's south-eastern (roadside) boundary have been in place for many years collectively providing a valuable visual amenity which contributes to the character and ambience of this part of the Dublin

Road. They form part of the line of coniferous trees which screen the entire Oakleigh Court development from the public realm. The removal of these trees would effectively open up a 31.5m approx.) gap exposing the proposed dwelling and the Appellant's existing dwelling. The proposal to replant semi-mature, deciduous 'native trees' to match the opposing Malahide Castle demesne is problematic in that what type, size or height of tree has never been specified. The use of deciduous would result in the proposal be highly exposed to the Dublin Road during the autumn and winter months when there is no foliage. I am not persuaded by the appeal's suggestion that the replacement trees '*... would further break down the elevation, providing the public realm with an impression of the mass of a building but as viewed from small individual viewpoints through the trees*'. I am concerned that the proposed development would be more physically and visually conspicuous than has been suggested in the appeal and am not swayed by the offer that larger, more mature trees could provide added benefit.

7.2.4 I am of the opinion the proposed dwelling would not fit well into its surroundings by virtue of it sitting prominently forward of any adjoining structure within the surrounding 'streetscape' and being reliant on seasonal foliage to screen it from the public realm. I would be concerned the proposed development would have too great an impact upon the visual amenities and physical character of the surrounding urban form that conflicts with Table 14.3's first design criterion.

7.2.5 I am also concerned as to the proposal's compliance with Table 14.4's first design criteria which, as a minimum, requires infill development proposals take cognisance of existing building lines and plot widths. The new dwelling would protrude beyond Oakleigh Court's existing building line established by the side elevations of Nos. 1 and 9. Oakleigh Court resulting in a structure that would be physically and visually incongruous with the established layout of the original residential development. By subdividing the existing residential curtilage the proposed development will be effectively splitting the appeal site's original plot width into two narrower plots that are inconsistent with the general plot widths of other Oakleigh Court dwellings.

7.2.6 I appreciate national guidance and Development Plan policies actively encourage the development of infill, brownfield, derelict or corner sites. However not every site is suitable for development which is appropriate or consistent with the proper and

sustainable development of the surrounding area. By removing the appeal site's substantial screening and subsequently relying upon replacement trees to eventually grow to sufficient height, width and foliage density as existing the proposed development would create a substantial gap in this long established tree lined section of the Dublin Road. It would result in a visually prominent and overbearing structure within the 'streetscape' that would detract from the physical and visual character and attractiveness of the area contrary to Policy SPQHP35, Objectives DMSO31, DMSO42, SPQHP40 and SPQHO42 and the design considerations of Tables 14.3 and 14.4 of the Development Plan.

### 7.3 Potential Impact on the Proposed Swords to Malahide Cycle Route.

7.3.1 The section of Dublin Road next to the appeal site is identified in the GDA Cycle Network Plan as a proposed secondary cycle route. The PA report notes the Dublin Road is also the most likely route of the proposed Swords to Malahide Cycle Route which the County Council has commenced early design and development of.

7.3.2 The appeal states the submitted application demonstrated compliance with the NTA's National Cycle Manual (2011). The proposed Site Layout Plans illustrate the hypothetical provision of a 6m wide road and two 1.25m wide cycle lanes based on the NTA's now superseded 2011 National Cycle Manual. Both drawings also illustrate the provision of a reduced width footpath, c.1.0m, on the western side of the Dublin Road and the concrete surfacing on the opposite side reduced to 0.65m in width. Neither area is within the Appellant's ownership or control. This equates to a total width of 10.15m. Section 3.0 of the appeal statement however states this section of the Dublin Road is only 9.58m wide. It states:

*'The existing public realm area consists of a [continuous] 9.58m wide strip of lands which currently contains a two way road and a footpath to one side. An enlarged space required for the capacity to carry upgrade works to include a 1.25m cycleway + 3m wide carriageway both ways and a 1m wide footpath on way would require increased public space 10.15m wide, shown on drawing AP002 and below.'*

7.3.3 There is a discrepancy between the acknowledged width of the Dublin Road and with the widths indicated on the submitted plans which the appeal does not reconcile or explain.

7.3.4 The Existing Site Layout Plan indicates the existing low rubble stone wall and boundary fencing is to be retained which, in my opinion, negates the possibility that the width of public realm at this location can be increased from 9.58m to 10.15m to facilitate the planned public infrastructure upgrade. Furthermore the Proposed Site Layout Plans illustrate a 10.15m wide Dublin Road without moving the existing stone wall and timber fencing further back into the appeal site. These discrepancies in measurements and lack of available space were highlighted in the PA's Transportation & Planning Section's consultation report of 31<sup>st</sup> May 2023 which stated:

*'The minimum standard that would be required for the potential future road upgrade would be to provide a 6.5m wide carriageway, 1.8m wide footpaths on both sides and 1.5m wide cycle tracks on both side; which would be an overall width of 13.1m This does not allow for any grass verges or for a higher level of service for cyclists.'*

7.3.5 The submitted development proposal also fails to incorporate space for upgrades to both footpaths. Drawing Nos. AP001 and AP002 show a 1m wide footpath running parallel to the appeal site and a 0.65m footpath running parallel with the Malahide Castle Demesne boundary wall. The proposed Swords to Malahide Cycle Route may also include physical improvements where feasible. The hypothetical provision of 1.0m and 0.65m wide footpaths on either side of the Dublin Road is, in my opinion insufficient for what may be required to upgrade and improve this well trafficked pedestrian route.

7.3.6 I am also cognisant that the Typical Layouts (TLs) in either the 2011 or 2023 NTA Cycle Design Manuals are generic templates and need not necessarily be applied uniformly along the proposed cycle route to account for physical characteristics and identified constraints. In advance of knowing the finalised layout and design of the Swords to Malahide Cycle Route and what upgrades are proposed to this section of the Dublin Road, any development which has the potential to interfere with such improvements must be considered premature. In this instance I concur with the PA's assessment that the proposal would be highly prejudicial to the delivery of improved



cycling and pedestrian facilities on the Dublin Road. The proposal therefore would be contrary to Objectives CMO6, CMO13 and DMSO116 and Policies CMP1 and CMP7 of the Development Plan and the proper planning and sustainable development of the area.

#### 7.4 Viability and Potential Effects of Proposed Replacement Trees.

7.4.1 The Development Plan and Tree Strategy for Fingal places great emphasis on protecting and preserving existing trees and hedgerows for their amenity, biodiversity value and contribution to what the Strategy describes as the 'urban forest' and the delivery of a '*... thriving, diverse and sustainable tree population*'. The trees within the surrounding area make up a diverse landscaping comprising of deciduous and coniferous trees of varied heights and canopy sizes on either side of the Dublin Road.

7.4.2 The application proposes removing approximately 31.5m of dense and mature trees (c.15m in height) and planting semi-mature, deciduous trees to match native trees in the area. The Appellant has suggested that these trees could, by way of a planning condition, be upgraded to include '*... more in number and age of tree type...*'.

7.4.3 The Council's Parks and Green Infrastructure Division's noted these Leylandii trees had been in place for many years acting as a buffer to the busy Dublin Road and whilst they were considered of low quality as individual trees, collectively they provided '*... valuable visual amenity along the entrance to Malahide village when combined with the woodland planted in the Malahide Demesne...*'.

7.4.4 The development has not indicated what type of replacement trees are proposed preventing An Bord Pleanála from estimating what height, width and foliage density would be provided and, most crucially, from properly assessing how much of the development would be screened from the public realm. No detailed landscaping proposal was included with the planning application or with the appeal statement to ensure '*... the right tree in the right place ...*' as suggested in the Forest of Fingal Tree Strategy. The appeal has provided no justification of this aspect of the proposed development in response to the planning authority's second refusal reason or to show compliance with relevant Development Plan policies and objectives. For example the only reference to why the appeal site's boundary trees are to be

removed is a single legend annotation on Drawing No. AP002 which states the c. 15m tall trees are '*... are a health and safety issue for the dwelling at that scale...*'. Such a claim is not supported by any other information or evidence from an appropriate source such as an *Arboriculturalist or Landscaping Consultant*. Nevertheless *the submitted plans and drawings make no reference to BS 5837:2012 'Trees in relation to design, demolition and construction – Recommendations'* as referenced in Section 4.9.63 of the Forest of Fingal Tree Strategy and subsequently required under Policy GINHP21 and Objective GINHO23 of the Development Plan.

7.4.5 Drawing AP100 illustrates a gap between the existing boundary fence and wall and the proposal's north-eastern elevation of between 2.7m at the front and 2.3m at the rear. Several of the replacement trees would only be positioned c.1.8m-2.0m from the proposed ground floor brick clad side element. In the absence of a comprehensive tree survey including Arboricultural Impact Assessment, Tree Constraints Plan, Tree Protection Plan and Arboricultural Method Statement in accordance with BS 5837:2012 and location of above and below ground services as highlighted in the PA's Parks and Green Infrastructure Division's consultation report I must agree with and share the authority's concerns that insufficient space has been left to allow the proposed replacement trees to grow properly and achieve the necessary level of compensatory canopy cover and screening required by the Development Plan.

7.4.6 In this regard the proposed development is considered contrary to the Forest of Fingal Tree Strategy, Policy GINHP21 and Objectives DMSO125, GINHO23 and GINHO46 of the Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

## 7.5 Appropriate Assessment.

7.5.1 The appeal site is located c. 1.19km from the nearest of several European sites comprising the Natura 2000 site network (see para. 5.2.1 above). The proposed development was screened out in the Council's assessment of the planning application. Given the location, nature and scale of the proposed development and the lack of any direct or indirect conduits/pathways I concur that no significant effect

is likely to arise either alone or in combination with other plan or project on any European sites. As such further Appropriate Assessment is unnecessary.

## **8.0 Recommendation.**

8.1. I recommend planning permission be **refused**. The assessment of this appeal raised de novo issues which have broadened the reasons for refusing permission. The first refusal reason is in addition to Fingal County Council's two refusal reasons. The Board may wish to consider seeking further comment from all parties on this additional reason for refusal.

## **9.0 Reasons and Considerations.**

1. The proposed development will not fit well into its surroundings by virtue of it sitting prominently forward of the south-eastern (side) building line created between Nos.1 and 9 Oakleigh Court resulting in a substantial physical and visual impact upon the amenities and physical character of the surrounding urban form. The development would be physically and visually incongruous with the established layout of the original residential development and result in two narrow plot widths that are inconsistent with the general plot widths of Oakleigh Court. The removal of the substantial screening presently afforded by the existing boundary trees and subsequently relying upon unspecified types of replacement trees to grow to sufficient height, width and foliage density as existing would create a substantial gap in this tree lined section of the Dublin Road resulting in a visually prominent and overbearing structure within the adjoining 'streetscape'. The proposed development is not consistent with the aims of the National Planning Framework's seventh National Strategic Outcome, the design considerations of Tables 14.3 and 14.4 of the Fingal Development Plan 2023-2029 or the requirements of Policy SPQHP35 and Objectives DMSO31, SPQHP40 and SPQHO42 and therefore would be contrary to the proper planning and sustainable development of the area.

2. In advance of the finalised Swords to Malahide Cycle Route the proposed development would be premature and a highly prejudicial constraint to the delivery of potential future improvements to pedestrian and cyclist facilities on the Dublin Road (R106) and potential future improved upgrades to the junction between the Dublin and Swords Roads. The proposed development is therefore considered to materially contravene Objectives CMO6, CMO13, DMSO116 and Policies CMP1 and CMP7 of the Fingal Development Plan 2023-2029 and would be contrary to the proper planning and sustainable development of the area.
3. The proposed development involves the removal of existing mature trees that provide a valuable collective visual amenity along the entrance to Malahide village which contributes to the character and ambience of this part of the Dublin Road. Based on the limited information submitted with the application and appeal pertaining to the type and subsequent screening effect of the proposed replacement trees the Board is not satisfied that the proposed replacement planting is feasible within the narrow strip of ground left between the proposed dwelling and existing boundary wall and fencing. The Board is not satisfied that the development proposal has demonstrated compliance with the aims and objectives of 'The Forest of Fingal – A Tree Strategy for Fingal' 2022-2032, regarding providing equivalent canopy cover replacement. The proposed development is therefore not considered compliant with Policy GINHP21 and Objectives DMSO125, GINHO23 and GINHO46 of the Fingal Development Plan 2023-2029 or consistent with the proper planning and sustainable development of the area.

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

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Tony Ewbanks

Planning Inspector

22<sup>nd</sup> February 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>			
<b>Proposed Development Summary</b>	Construction of 1no. dwelling.		
<b>Development Address</b>	1 Oakleigh Court, Malahide, Co Dublin, K36 XC99		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	
		<b>No</b> <b>X</b>	No further action required
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	<b>X</b>	Class 10, Part 2, Schedule 5. Does not equal or exceed any relevant quantity, area or limit.	Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
		N/A	<b>Conclusion</b>
<b>No</b>			No EIAR or Preliminary Examination required
<b>Yes</b>	<b>X</b>	Class 10, Part 2, Schedule 5. 500no. dwellings.	A single dwelling does not exceed this limit. Proceed to Q.4

**4. Has Schedule 7A information been submitted?**

<b>No</b>	<b>X</b>	<b>Preliminary Examination required</b>
<b>Yes</b>		<b>Screening Determination required</b>

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

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