



An
Bord
Pleanála

Inspector's Report ABP318009-23

Development	Erection of art piece and associated site works.
Location	Lands at Tayleurs Point (adjacent to Tower Street), Rush, Co. Dublin
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F22A/0462
Applicant(s)	Rush Community Council.
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party vs Refusal
Appellant(s)	Rush Community Council
Observer(s)	None
Date of Site Inspection	30 th November 2023
Inspector	Leah Kenny

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Appendix 1 – Form 1: EIA Pre-Screening

1.0 Site Location and Description

The subject site is located at Tayleurs Point approximately 1km southeast of Rush village. The site comprises a rectangular open field which is bordered to the north by Tayleurs Point Road /Tower Street and to the south by the coastline. The Tayleurs Point residential estate is located on the other side of Tayleurs Point Road /Tower Street. The lands are bordered to the east and west side by low hedgerows and agricultural fields.

The land, which is owned by Fingal County Council, is known as Tayleurs Field or Tayleurs Park, and is used for recreational purposes. There are two seats located opposite each other mid-point along the northern and southern boundaries. The land is accessed from Tayleurs Point Road /Tower Street but there is no access road or pedestrian pathway around the field or through it to the coastline. There is no boundary treatment on the roadside of the lands apart from a low fence approximately 500mm in height.

2.0 Proposed Development

The proposed development consists of a three-dimensional sculpted artwork in the form of a Mantra Ray. The galvanised perforated steel structure will measure 4.9m (wide) x 3.68m (high). It will be supported on a galvanised steel base plate which will be bolted to a reinforced concrete slab.

The artwork is to be located within the southwest corner of the lands adjacent to the coastline. There are no details as to the treatment of the site other than the installation of the artwork.

3.0 Planning Authority Decision

3.1. Decision

By order dated 23 August 2023, Fingal County Council decided to refuse permission for the development for 2 no. reasons as follows:

- Reason No. 1: The proposed development by reason of its location in a highly sensitive area within a Coastal Landscape Character Type; the nature, design and prominent location of the site and given the sensitivities of the receiving environment, it is considered that the installation of an art piece at this location would contravene materially Objective GINHO59 of the Fingal Development Plan 2023-2029 with regard to the requirement that new development in sensitive areas should not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and not detract from the scenic value of the area. The development if permitted would introduce an incongruous feature to this sensitive landscape and would seriously injure the visual amenities of the area.
- Reason No. 2: Having regard to the location of the development and the requirement to preserve views towards the coastline at this location as set out in the Fingal Development Plan – Green Infrastructure 1 Sheet 14; the development as proposed would interfere with views of special amenity value and would contravene materially Objective GINHO60 of the Development Plan which seeks to protect views and prospects that contribute to the character of the landscape, particularly those identified in the development plan from inappropriate development. The development would therefore be contrary to the proper planning and development of the area.

3.2. Planning Authority Reports

Planning Report

The planning report is the basis of the Planning Authority's decision to refuse permission.

The main issues addressed in the Case Planner's initial report (dated 25th October 2022) considered the proposed development in the context of *inter alia* compliance with the Fingal 2023 – 2029 Development Plan, impact on the visual amenity of the area and landscape, impact on Natura 2000 Sites and land ownership. Further information was requested from the applicant, summarised as follows:

- Item 1: The applicant is requested to provide an appropriate assessment for the proposed structure regarding its proximity to nearby Natura 2000 sites.

- Item 2: The applicant is requested to provide photomontages in colour and update the LVIA to include Verified Views. Of particular importance are viewpoints from locations that have a 'Preserve Views' objective on Sheet 6 of the Fingal Development Plan e.g. laneway connecting Tayleurs Point Road/Tower Street to the coast and from the South.
- Item 3: The applicant is requested to provide a rationale for the proposed structure and its location and relationship to the area. It is requested that the applicant provide a more detailed description of the proposal including materials and whether it is proposed to light the structure.
- Item 4: The applicant is requested to provide consent from the owner of the lands to submit the planning application.

Following consideration of the material submitted by the applicant, the updated Case Planner's report (dated 22nd August 2023) concluded that the response to the Additional Information was not acceptable and recommended a decision to refuse permission.

Other Technical Reports

- Parks and Green Infrastructure – Objected as the proposed development is considered inappropriate for a Highly Sensitive Landscape.
- Transportation Planning – No objection to the proposal.
- Water Services/Irish Water – No objection to the proposal.
- Art and Cultural – In its initial report the Arts Office recommended a condition that a) the piece of public art should be designed in consultation with the Council, and b) its location should be agreed with the Parks and Green Infrastructure Division prior to the commencement of development. In its subsequent report, acknowledging the sculpture had already been commissioned and fabricated, it did not object but raised concern that because the piece was not created by an artist, the Arts Office would not be able to additionally fund, maintain or promote it.
- Conservation Officer – No comment on the matter.

3.3. Prescribed Bodies

None.

3.4. Third Party Observations

Four submissions were received objecting to the proposed development for the following summarised reasons:

- Tayleurs Point field is the recreational area associated with the construction of Tayleurs Point housing estate.
- Art sculpture will change the recreational status of the field. It will attract a wider user group which will inhibit the use of the recreational ground.
- The proposed development materially contravenes the zoning for the area and the protection of coastal views.
- It will impact on coastal views and views of Lambay Island due to its height.
- The proposal is adjacent to the Rogerstown Special Protection Area and potential impacts need to be screened.

4.0 Planning History

There is no evidence of planning history on the site.

5.0 Policy and Context

5.1. Fingal County Development Plan 2023-2029

This application is considered under Fingal County Development Plan 2023-2029 which came into force on the 5th April 2023. The site is located just outside of the development boundary of Rush Village in an area zoned 'High Amenity' with the objective to protect and enhance high amenity areas. The vision for the lands is to *"protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored"*. There are protected views along Tayleurs Point/Tower Road to the north of the subject site and a coastal walk is indicated to the south.

In the Development Plan's Landscape Character Assessment (LCA) the site is within the 'Coastal' Character Type which is categorised as having 'Exceptional' landscape value and 'High' sensitivity.

Chapter 9 'Green Infrastructure and Natural Heritage' includes several policies and objectives relevant for the proposed development, including those which aim to protect highly sensitive landscapes, such as the Coastal Type, as follows:

- **Policy GINHP25 – Preservation of Landscape Types:** Ensure the preservation of the uniqueness of a landscape character type by having regard to the character, value and sensitivity of a landscape when determining a planning application.
- **GIN Objective GINHO55 – Protection of Skylines:** Protect skylines and ridgelines from development.
- **GINHO59 – Development and Sensitive Areas:** Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area.

Section 9.6.15 of the Development Plan acknowledges the need to protect and conserve views and prospects throughout the County for future generations, including views over the seascape. In assessing views and prospects it is not proposed to give rise to the prohibition of development along these routes, but development, should not hinder or obstruct such views and prospects, and should be designed and located to minimise their impact. Relevant policies and objectives include:

- **Policy GINHP26 – Preservation of Views and Prospects:** Preserve views and prospects and the amenities of places and features of natural beauty or interest including those located within and outside the County.
- **Objective GINHO60 – Protection of Views and Prospects:** Protect views and prospects that contribute to the character of the landscape, particularly those identified in the Development Plan, from inappropriate development.

At Section 9.6.17 of the Development Plan, it is acknowledged that the High Amenity zoning objective has been applied to landscapes of special character in which inappropriate development would contribute to a significant diminution of landscape value in the County. Such areas are identified as including *inter alia* important elements in defining the coastal character of the County and/or act as a backdrop to important coastal views.

- **Policy GINHP28 – Protection of High Amenity Areas:** Protect High Amenity areas from inappropriate development and reinforce their character, distinctiveness and sense of place.
- **Objective GINHO67 – Development and High Amenity Areas:** Ensure that development reflects and reinforces the distinctiveness and sense of place of High Amenity areas, including the retention of important features or characteristics, taking into account the various elements which contribute to its distinctiveness such as geology and landform, habitats, scenic quality, settlement pattern, historic heritage, local vernacular heritage, land-use and tranquillity.

At Section 9.7, the Development Plan highlights the importance of the coast being managed and developed in a way which protects and enhances it. Section 9.7.1 sets out the general principle that development in coastal areas should be accommodated wherever possible in previously developed areas before consideration is given to development in greenfield sites. This is reinforced in the following policies and objectives:

- **Policy GINHP29 – Development and the Coast:** Protect the special character of the coast by preventing inappropriate development along the coast.
- **Objective GINHO73 – New Development and the Coast:** Prevent inappropriate development along the coast, particularly on the seaward side of coastal roads. New development for which a coastal location is required shall, wherever possible, be accommodated within existing developed areas.

In respect of Coastal Tourism and Recreation (Section 9.7.2) the Council recognises that leisure and amenity activities require a coastal location but that such activities need to be controlled and directed appropriately in view of the sensitive nature of the coast.

- **Policy GINHP30 – Coastal Recreation:** Encourage the enhancement of existing and development of new shared access leisure and amenity type uses along the coast so long as such uses do not cause significant adverse impacts on the environment, visual amenity and heritage.

Objective GINHO78 (Coastal Way) sets out the Council's plan to develop the Fingal Coastal Way, a greenway from north of Balbriggan to Kilbarrack taking full account of the need to protect the natural and cultural heritage of the coast and the need to avoid significant adverse impacts on European Sites, other protected areas and species protected by law. It is noted that two the route options for the proposed Fingal Costal Way run along Tayleurs Point / Tower Road to the north of the subject site.

Section 10.12 of the Development Plan considers 'Arts'. Policy Objective HCAP37 supports the implementation of the Fingal County Council Arts Plan 2019 – 2025 by facilitating and encouraging the provision of new or improved arts and cultural facilities within the County.

Public Art is also addressed within Chapter 14 (Development Management). The Development Plan acknowledges that public art can make a positive contribution to the cultural identity and visual appearance of an area and can be utilised to identify historic events and features adding to the quality and engagement of the public realm. It sets out that proposals for new public artwork should *inter alia*:

- Integrate with its immediate location and the context of the surrounding environment.
- Illustrate a comprehensive understanding of site considerations, and the physical, social, historical, topographical and architectural context.
- Provide for the highest aesthetic quality in terms of materials and finishes with low maintenance value.

- Engage with the local community to enhance social relevance and significance.

5.2. Natural Heritage Designations

The site is not located within a designated Natura 2000 site. The site does lie approximately 550m northeast of Rogerstown Estuary SAC (Site Code: 000208) and approximately 400m northeast of Rogerstown Estuary SPA (Site Code: 004015).

5.3. EIA Screening

- 5.3.1. Having regard to the modest scale and nature of the proposed development and the absence of any significant environmental sensitivity in the vicinity of the site, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

In setting out the grounds of First Party appeal, the applicant stated that:

- The proposed art installation is modest in size.
- The proposed development is 170m from the nearest house and will not damage views of the coastline.
- The Council failed to consider the conclusions of three specialists confirming no impact on the location specified.
- The applicant would have no issue with the relocation of the art piece to some other point within the green space provided by Fingal County Council at Tower Street.

6.2. Planning Authority Response

The Planning Authority reiterated the sensitive nature of the proposed location and the objective of the Development Plan to preserve views towards the coastline. It reconfirmed its position that having regard to the nature, design and prominent location of the site, it considered that the installation of the art piece would materially contravene Objective GINHO59 and Objective GINO60.

6.3. Observations

There were no observations.

6.4. Further Responses

Not applicable.

7.0 Assessment

- 7.1.1. Having examined the application details and all other documentation on file, including the submissions received in relation to the planning application, the First Party Appeal, the response of the Planning Authority, inspection of the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues on this appeal are principle, and visual and landscape impact.

Principle

- 7.1.2. The Fingal County Council Development Plan supports appropriate development throughout the county in accordance with the principles, policies and objectives laid down in the Plan.
- 7.1.3. While public art is not specifically provided for under the zoning matrix for lands zoned High Amenity, the Council acknowledges that public art can make a positive contribution to the cultural identity and visual appearance of an area subject to *inter alia* integrating with its immediate location and the wider context, illustrating a comprehensive understanding of site considerations and providing the highest aesthetic quality in terms of materials and finishes including low maintenance value.

- 7.1.4. The Plan also highlights the importance that the coast is managed and developed in a way which protects and enhances its natural and cultural heritage and its landscape. Objective GINHO73 in respect of new development and the coast is considered especially relevant to the subject appeal in that it seeks to a) prevent inappropriate development along the coast, particularly on the seaward side of coastal roads and, b) advocates for new development for which a coastal location is required to be accommodated, whenever possible, within existing developed areas.
- 7.1.5. Having regard to the foregoing I have concerns with the principle of development at this location for the reasons outlined below.
- 7.1.6. In the first instance, I note that neither the Arts Officer, Parks and Green Infrastructure Division or Property Section of Fingal County Council appear to have been consulted on the work prior to commissioning and completion of the sculpture, and the lodgement of the planning application; notwithstanding the intention that it is ultimately a public sculpture to be located on lands owned by Fingal County Council. I consider this undermines the basic premise that the coast is managed and developed in a way which protects and enhances its natural and cultural heritage and its landscape.
- 7.1.7. From the RFI response and appeal, I note the stated rationale for siting of the sculpture at this location included the fact that the Ray-Banks (a fishing location) are visible from Tayleurs Point and Tayleurs Field. However, from the outset there also seemed to be the erroneous understanding that the Council had given consent for the siting of the sculpture at the proposed location.
- 7.1.8. The appellant also refers to its understanding that Fingal has plans to put in a pathway around Tayleurs Field and hopes that the lighting of the sculpture would be included in such work. However, no such proposals are acknowledged by the Council, including the Parks and Green Infrastructure Division, who recommended permission be refused for the proposed development.
- 7.1.9. It is not apparent that the proposed development therefore aligns with any specific plans or proposals for this area, which could provide a justifiable and managed context. This is particularly relevant having regard to the highly sensitive nature of the location and the various policies and objectives in place to protect the area from inappropriate development. I note the suggestion that the art piece be located on a

different part of the Fingal lands at Tayleur's Point, however, I consider the same issues arise.

- 7.1.10. It is also not apparent that the proposed development could not be accommodated within the more built-up area of Rush village, and I consider such opportunities should be fully explored in consultation with Fingal's Arts Office and Parks and Green Infrastructure Division.
- 7.1.11. Secondly, I consider the role and accessibility of Tayleurs Field to be problematic having regard to the nature of the proposed development.
- 7.1.12. The field provides an open and informal recreational area and the only structures within the park are two seats located opposite each other mid-point along the eastern and western boundaries. Even the public notice board providing details of Lambay Island is located on the public footpath and not within the park, nearer to the coastline. In its current form it does not encourage widespread public use outside of residents in the immediate vicinity.
- 7.1.13. The fact that there is no designated path into and around the park, or access to the coastline further reduces public interest in and accessibility of the park. In this respect it is noteworthy that, no access arrangements or pathways are proposed as part of the subject application. Although, I again note that the appellant refers to its understanding that Fingal has plans to put in a pathway around the park.
- 7.1.14. I consider public art an important opportunity to enhance a location, from a placemaking perspective and in terms of stimulating interest in the local community and visitors alike. However, public art can also detract from a location, for example, if it is at risk of vandalism because of no or insufficient natural surveillance. It can also fail to stimulate interest because it is remote from an audience, be it members of the public, residents of a housing estate etc. I consider the latter to be a very real risk in respect of siting the proposed development at Tayleurs Field. In this regard, I note the comment of the Arts Office that it would not be able to "*additionally fund, maintain or promote*" the artwork.
- 7.1.15. Circumstances and plans for Tayleurs Field may change in the future, and a piece of public art (such as that proposed in this instance) may be appropriately integrated into such proposals which could address wider issues such as accessibility, lighting maintenance and associated environmental considerations; however, at this time, I

consider the proposed development to be inappropriate and therefore contrary to Policy GINHP29 and Objective GINHO73.

- 7.1.16. Furthermore, taking into consideration the emphasis placed in the County Development Plan on development within high amenity areas, which must be planned in a sensitive manner protecting views and prospects for future generations, I consider that the principle of the development needs careful consideration in terms of visual and landscape amenity. See below.

Visual and landscape Impact

- 7.1.17. The sensitivity of the site is highlighted by its 'High Amenity' zoning, requirement to preserve views towards the coastline from Tayleur Point / Tower Street and generally the requirement to protect the site from inappropriate development.
- 7.1.18. The existing recreational use of Tayleurs Field is low key and informal - there are no demarked paths and very limited recreational furniture aside from two park benches. Nothing manmade within the field breaches the skyline or views over the seascape.
- 7.1.19. I acknowledge the effort the applicant went to in undertaking a Landscape and Visual Impact Assessment in respect of the proposed development. Having regard to the nature of the proposed development i.e., a piece of public art, it is somewhat anomalous that such an assessment is required to prove its potential visual impact on the surrounding landscape would be limited. Public art should be seen, and it is evident from several of the proposed viewpoints that the proposed sculpture will be seen. Insofar as it will be seen as a man-made object and an intrusion into the open vistas over the coastline, it is contrary to the objectives of the Development Plan to preserve of views along Tayleur Point / Tower Street (i.e., Policy GINHP26 and Objective GINHO60), protect High Amenity Areas (Policy GINHP28) and prevent inappropriate development along the coast, particularly on the seaward side of coastal roads (Objective GINHO73).
- 7.1.20. Therefore, I consider the proposal to be unacceptable from a visual and landscape impact perspective and not in accordance with the provisions of the County Development Plan.

Appropriate Assessment Screening

7.1.21. Having regard to the nature and scale of the proposed development, the contents of the AA Screening Report submitted with the application, it is concluded that no Appropriate Assessment issues arise, it is concluded that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

The site of the proposed development is on lands zoned 'High Amenity', in a coastal area of high landscape and visual amenity where there are unobstructed views towards the coast and seascape which it is an objective of the Fingal Development Plan 2023 – 2029 to protect and preserve. It is considered that the proposed development, by reason of its nature, scale and extent would result in haphazard development and intrude into views towards the coast and seascape and would therefore seriously injure the landscape and visual amenities of the area. The proposed development would, therefore, not be in accordance 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.



Leah Kenny
Planning Inspector

31st January 2024

Appendix 1 - Form 1
EIA Pre-Screening
[EIAR not submitted]

An Bord Pleanála Case Reference	ABP318009-23		
Proposed Development Summary	Erection of art piece and associated works.		
Development Address	Lands at Tayleurs Point (adjacent to Tower Street), Rush, Co. Dublin		
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	
		No	X
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		Class.....	EIA Mandatory EIAR required
No			Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			

		Threshold	Comment (if relevant)	Conclusion
No		N/A		No EIAR or Preliminary Examination required
Yes		Class/Threshold.....		Proceed to Q.4

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

Inspector: Leah Kerry

Date: 31st January 2024