

An
Bord
Pleanála

Inspector's Report ABP318158-23

Development	Construction of two dwellings and associated site works.
Location	No. 1 Cloonmore Drive, Dublin 24.
Planning Authority	South Dublin County Council.
Planning Authority Reg. Ref.	SD23A/0173.
Applicant(s)	Imad Hassan
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Imad Hassan
Observer(s)	None
Date of Site Inspection	06/12/2023
Inspector	Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The applicant site is located at no.1 Cloonmore Drive within a residential housing estate to the north of Fortunestown Road, which contain a large number of terraced and semi-detached houses in cu-de-sacs denoted by the prefix 'Cloonmore';
- 1.2. 'Cloonmore' is located at the built edge of the city and its suburbs. The section of the housing estate on the west side of Cloonmore Road, comprises approximately 160 houses, configured within residential cul-de sacs including Cloonmore Park, Cloonmore Green, Cloonmore Grove and Cloonmore Lawns. Cloonmore Drive is one of two access roads into this section of the estate on the west side of Cloonmore Road;
- 1.3. The access road via Cloonmore Drive leads to Fortunestown Road. This stretch of Fortunestown Road links Jobstown Road with Blessington Road. The road was trafficked on the day of my site visit. The development site is located proximate to the junction of Cloonmore Drive and Fortunestown Road.
- 1.4. The applicant site is located on the west side of Cloonmore Drive. The site comprises the large side garden of the end of terrace two-storey dwelling house at no.1 Cloonmore Drive. The side garden is enclosed by a low boundary wall and is in lawn with one noticeable mature tree.
- 1.5. Cloonmore Drive comprises a suburban streetscape of terraced houses on the western side of the street. No. 1 Cloonmore Drive is the end house in the terrace with has a visible gable elevation facing south. There are a number of window openings in the south gable elevation of No.1 Cloonmore Drive.
- 1.6. The subject site is visually located within a linear green space to the south of the building line of the 'Cloonmore' estate. This residual green area is a buffer between the carriageway on Fortunestown Road and the south gable elevations of the terraces at Cloonmore Drive, Cloonmore Grove and Cloonmore Lawns.
- 1.7. The site area is given as 0.02323 hectares.

2.0 Proposed Development

- 2.1. The construction of two dwellings in the side garden of no.1 Cloonmore Drive, two new vehicular access points and associated site works.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the following reasons:

- (1) The applicant site is subject to the zoning objective 'OS' – 'To preserve and provide for open space and recreational amenities in the South Dublin County Development Plan 2022-2028. Residential use is open for consideration, only where H3 Objective 4, with lands zoned 'OS'. The applicant has failed to demonstrate compliance with this policy objectives. In this regard the proposed development of 2 dwellings is a material contravention of the County Development Plan.
- (2) The proposed development would endanger public safety by reason of traffic hazard and/or obstruction of road users, due to the proximity of the access points to a busy arterial route, as well as the narrow/skewed driveways and the proximity of the driveways to each other. This would be contrary to Policy SM5 Street and Road Design, which seeks to promote road safety, and would be contrary to the sustainable planning and development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The decision of the CEO of South Dublin County Council reflected the recommendation of the planning case officer.

3.2.2. Other Technical Reports

- The Roads Section recommendation is refusal.
- Public realm planning recommend additional information / concerns relate to landscaping and boundary treatment, green infrastructure and SuDS.

- Services & Drainage and Flood Risk have no objection in principle / concerns can be addressed by condition.
- There are no objections from Irish water subject to conditions.

4.0 Planning History

None relevant.

5.0 Policy and Context

5.1. Development Plan

The local policy framework is provided by the South Dublin County Development Plan 2022-2028. The relevant policies and objectives in the development plan relate to the functional area of South Dublin County Council (SDCC) and are set-out below:

- Zoning

The relevant land-use zoning objective is “OS” (Map 9): *to preserve and provide for open space and recreational activities.*

The Zoning Objectives are listed in Chapter 12 (Implementation & Monitoring), the relevant Table 12.15 (Land-Use Zoning Objective “OS”) contains a limited number of permissible uses, which does not include residential. However, Residential* is an open for consideration when this accords with the requirements of H3 Objective 4.

H3 Objective 4 states:

To support community led housing developments for older persons and social and Council affordable housing in established areas on lands designated with Zoning Objective “OS” (To preserve and provide for open space and recreational amenities), only where the quality and quantum of remaining public open space is deemed to be adequate and the amenities of the area are preserved.

- Urban Consolidation

Chapter 2 (Core Strategy & settlement Strategy). Section 2.2 is relevant and states:

The Core Strategy is made up of the settlement hierarchy and growth strategy for South Dublin County and is an essential part of the Plan demonstrating that the quantum and location of development in the County is in line with National and Regional planning policy.

The core strategy is depicted diagrammatically in Figure 10 (Core Strategy Map) would indicate that the application site is located within the designation of 'Dublin City and Suburbs'.

The development plan under the heading 'Key Urban Centres within Dublin City and Suburbs' states *inter alia* that the relatively new district area, in Fortunestown / Citywest, has been developing over the last number of years at a significant pace and is subject to a Local Area Plan. Its proximity to the Citywest Business Park has facilitated the delivery of housing and jobs beside each other which is supported by the Red Luas Line.

Policy C54 (Active Land Management) Objective 2 is relevant and states:

To promote the delivery of residential development through active land management measures and a co-ordinated planned approach to developing appropriately zoned lands at key locations, including regeneration areas, vacant sites and under-utilised areas.

Policy CS6 (Settlement Strategy – Strategic Planning Principles) is relevant and states:

To promote compact growth and to support high quality infill development in existing urban built-up areas by achieving a target of at least 50% of all new homes to be located within or contiguous to the built-up area of Dublin City and Suburbs (consistent with NSO 1, RSO 2, NPO 3b and RPO 3.2).

Policy CS7: (Consolidation areas within the Dublin City and Suburbs settlement), which promotes the consolidation and sustainable intensification of development within the Dublin City and Suburbs settlement boundary - Objective 3 states:

To promote and support the development of undeveloped infill and brownfield zoned lands and to promote pre-application consultation in accordance with Section 247 of the Planning and Development Act, 2000 (as amended) (consistent with RPO 4.3).

- Infill Development

Chapter 12 (Implementation and Monitoring) Section 12.6.8 (Residential Consolidation) Paragraph Infill Sites and Paragraph Corner / Side Garden Sites is relevant.

- Vehicular Access

Chapter 7 (Sustainable Movement) Policy SM5 and Chapter 12 (Implementation and Monitoring) 12.7.4 (car parking standards) and 12.7.6 (Car Parking Design Layout) are relevant.

- The following national and regional planning policy documents are relevant in the context of sustainable residential land-use and the strategic policy objective to achieve compact growth:

- The National Planning Framework (NPF) (Project Ireland 2040) (Government of Ireland 2018);
- The Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Regional Assembly (EMRA) (June 2019).
- The Department of Environment Heritage and Local Government 'Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas' (2009) and the accompanying Design Manual (2009).

5.2. EIA Screening

5.3. The proposed development is not within a class where EIA would apply.

6.0 The Appeal

6.1. Grounds of Appeal

The appeal statement is prepared by Paul Sheehy on behalf of the appellant. The appeal statement is summarised below:

- The appeal addresses the reasons for refusal of planning permission and addresses concerns raised in the planning report which are valid. The appellant has submitted revised drawings with the appeal statement in response to those concerns including the reconfiguration of the vehicular accesses to the two proposed houses to form a shared vehicular access;
- The proposed driveways would not be materially different from any other driveways in the county. However, where this proposal presents a unique risk is at the junction with Fortunestown Road, The closet driveway in the application to the planning authority is 12m from the junction with Fortunestown Road. The revised site plan drawing PP-06A can increase the distance to 13m as an alternative option.
- In the matter of the first reason for refusal, the planning case officer assessment of the site zoning is largely accurate. However, 23 sqm. of the proposed site is zoned residential;
- The development site has always been used as a private garden space albeit that the side garden was purchased by the current owner from South Dublin County Council (SDCC) in 2017. A boundary wall was erected in the 1980s. The consideration of the fact that the development site has been maintained as a private garden for a considerable time would be appreciated in the final decision making process;
- The open space zoning specific requirement H3 Objective 4, which requires community benefit, would be satisfied by the construction of houses on the site;

- A number of buildings throughout the country have been re-purposed for housing, notably the former ESB offices in East Wall. So the principle of rezoning sites for the purpose of housing has been established.
- In the matter of the second reason for refusal, the proposal would endanger road safety it is claimed that the volume of road traffic at the junction of Cloonmore Drive and Fortunestown Road is not consistent and that the junction is clear for the majority of the week. The evidence base supplied is a daily traffic assessment at 5 minute intervals using Google Maps;
- The junction of Cloonmore Road and Fortunestown Road is a very wide open and unobstructed junction. It would be difficult to see how any road user would be put under any additional risk from someone accessing or egressing the site given you have a very wide and open unobstructed view towards the site;
- The width of Cloonmore Drive is 9m and the width of Fortunestown Road is 9.6m. These roads are wide in comparison to other urban streets. The public pathways are also wide at 3.6m. A car existing from the site can reverse for 3.6m before the car crosses the threshold of the public path;
- The planning authority road report states that the proposed driveways are narrow and that the access is skewed. This can only be remedied by providing one 5m access point. Please see site plan drawing PP-06A;
- The appellants welcome the positive points of the planning case officer assessment which included the merits of the proposal assessed against the requirements of the development plan;
- The appellant has responded and clarified the design intent (where possible) arising from the planning authority assessment principally for the following: elevation finish of the proposed gable south elevation, SUDS (compliance with relevant guidelines not demonstrated) and Landscape & Green Infrastructure;
- The proposed development is for 2 number 2-bedroom houses is a small scale commercial development and consideration should be given to modest scale of the proposal.

6.2. Planning Authority Response

The planning authority confirms its decision to refuse planning permission. The issues raised in the appeal have been covered in the Chief Executive Order.

6.3. Observations

None recorded.

7.0 Assessment

- 7.1. The points made in the appeal and the reason for refusal are assessed below. It is noted there are no new substantive matters for consideration. The appellant has submitted revised drawings with the appeal statement including elevation modifications and the reconfiguration of the new vehicular accesses. It is considered that the amendments to the proposed elevations are minor in nature. However, the omission of the two number proposed new dedicated vehicular accesses, one for each of the proposed houses, and the amalgamation of the entrances to form one large vehicular access opening is a significant change from the advertised development.

Therefore, I intend to assess the proposed development as submitted to the planning authority. I advise the Board that the proposed amendments, included as part of the appeal statement, would on balance represent a material change to the development as advertised and as such will not form part of my assessment below.

- 7.2. The proposed development comprise two semi-detached 2-storey 2-bedroom houses with front and back gardens aligned with the established building line on Cloonmore Drive. The houses would have slightly skewed vehicular accesses each 2.5m wide and in-curtilage parking. The grounds of appeal, the reasons for refusal and other relevant planning matters relating to the proper planning and sustainable development of the area are assessed under the following headings below:

- Compact growth achieving urban consolidation;
- Zoning;
- Traffic hazard / obstruction of road users;

- Infill residential development;
- Other matters responded to by the appellant arising from the planning authority assessment.

Compact growth and the achievement of urban consolidation

- 7.3. The appellant claims the principle of rezoning sites for the purpose of housing has been established by recent events, including the repurposing of the former ESB offices in East Wall, and that houses built on the application site will provide more accommodation for the community.

The South Dublin core strategy is depicted diagrammatically in Chapter 2, Figure 10 (Core Strategy Map) of the South Dublin County Development Plan 2022-2028 and would indicate that the application site is located within the designation of 'Dublin City and Suburbs'. It is considered that the proposed development would provide two additional residential units within the existing built-up area of 'Dublin City and Suburbs' on underutilised serviced lands. The National Planning Framework (NPF 2018) and the Regional Spatial and Economic Strategy (RSES) for the Eastern and Midland Region (EMRA) (2019) encourage and support the densification of existing urban / suburban areas.

The strategic objective compact urban development is supported in principle by densification of urban / suburban lands in particular under-utilised lands accessible to commercial centres by walking, cycling and public transport. The development site is located at the built edge of the city within a suburban residential housing estate. It is in a relatively isolated location for walkers and cyclists. However, it is accessible by public transport. The red line Luas at the Cheeverstown stop is an approximate 25 minute walk from the development site. Cloonmore Drive is located north-west of the terminus of Dublin Bus Route 27. It is considered that the development site is serviced by proximate frequent public transport.

The South Dublin County Settlement Strategy is guided by the policy framework set out at National and Regional levels. It seeks the consolidation of the existing urban footprint including the designation 'Dublin City and Suburbs'. Policy CS6 (Settlement Strategy – Strategic Planning Principles) is relevant and states:

To promote compact growth and to support high quality infill development in existing urban built-up areas by achieving a target of at least 50% of all new homes to be located within or contiguous to the built-up area of Dublin City and Suburbs (consistent with NSO 1, RSO 2, NPO 3b and RPO 3.2).

Section 2.7.1 (Dublin City & Suburbs) of the South Dublin County Development Plan states that 'Dublin City & Suburbs' designation is the only nationally and regionally defined settlement within South Dublin County. The characteristics of the neighbourhoods within this settlement are unique and provide individual strengths and opportunities which development plan policy must protect and enhance in order to contribute towards the creation of great places in which to live, work, socialise and invest.

Policy CS7: (Consolidation areas within the Dublin City and Suburbs settlement), which promotes the consolidation and sustainable intensification of development within the 'Dublin City and Suburbs' settlement boundary. Policy CS7 Objective 3 promotes and supports the development of undeveloped infill and brownfield zoned lands while promoting pre-application consultation.

It is noted that no pre-application consultation was conducted by the applicant with the planning authority. The substantive matter of the appeal is the zoning of the infill application site, which is interrogated below assessing the compatibility of residential use with the site "OS" zoning.

Zoning

- 7.4. The first reason for refusal is that the proposed development is located on lands zoned for the purposes of open space. Residential development is not a permitted use under the 'OS' zoning objective of the South Dublin City Development Plan 2022-2028. Residential* is open for consideration to support older persons and social and council affordable housing as provided for by the H3 Objective 4 provision attached to the 'OS' zoning objective. The case officer notes in the assessment of the development that a small part of the site is zoned residential.

The appellant states that 23 sqm. of the development site is zoned residential. However, the appellant accepts that the substantive site zoning is open space "OS".

The statutory zoning objective “OS” seeks to preserve and provide for open space and recreational activities and residential development is neither permissible or open for consideration other than residential development that satisfies provision H3 Objective 4. The planning authority zoning assessment concluded that the development proposal is a material contravention of the South Dublin Development Plan 2022-2028. I would concur with the planning authority assessment.

I note that the appellant has made an argument to broaden the interpretation of the H3 Objective 4 provision that would consider the construction of houses on the site a community benefit by reason of the provision of ‘more accommodation for the community generally’.

I do not consider that the proposed development for two infill private houses, notwithstanding the merits of increasing the housing stock within ‘Dublin City and Suburbs’, would be consistent with the provisions of the “OS” zoning objective as the wording of the H3 Objective 4 provision is explicit: *To support community led housing developments for older persons and social and Council affordable housing in established areas on lands designated with Zoning Objective “OS”.....*

H3 Objective 4 permits residential development where it supports community led older persons, social and council affordable housing. The proposed development does not satisfy the requirements of H3 Objective 4 and, as such, the development would be inconsistent with and would materially contravene the “OS” zoning.

Furthermore, Section 37(2)(a) of the Planning and development Act 2000 (as amended) provides subject to paragraph (b) that the Board may in determining an appeal under this section decide to grant permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority. Section 37(2)(b) of the Planning and Development Act 2000 (as amended) provides that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with the following:

- The proposed development is of strategic or national importance;
- There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or

- Permission for the proposed development should be granted having regard to regional planning guidance, Section 28 guidelines, Section 29 policy directives, 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
- 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.

It is considered that the zoning of part of the site for residential purposes as claimed by the appellant as justification for setting aside the substantive open space zoning objective does not have merit. I do not consider that there are conflicting objectives in the development plan or that the objectives are not clearly stated, insofar as the proposed development is concerned. Furthermore, I do not consider that the proposed development would satisfy the other criteria set out in Section 37(2)(b), which would make the material contravention of the South Dublin County Development Plan 2022-2028 permissible.

Road safety / traffic hazard / obstruction of road users

- 7.5. The second reason for refusal is on road safety grounds due to the proximity of the new vehicular access points to Fortunestown Road, which is a busy arterial route. Furthermore the reason for refusal also details the narrow / skewed driveways and the proximity of the driveways to each other as a traffic hazard (and/or an obstruction to road users).

The appellant claims that given reduced traffic volumes for the majority of the day, which have been assessed using google maps and are modest generally, the open unobstructed nature of the Cloonmore Drive / Fortunestown Road junction, the generous width of Fortunestown Road and Cloonmore Drive relative to other urban roads and the width of the public pavement, which will allow a car to reverse for 3.6m before the car crosses the threshold of the public path, that there is sufficient mitigation to permit access to the development without obstructing road users and causing a traffic hazard.

Chapter 7 (Sustainable Movement) and Chapter 12 (Implementation and Monitoring) Section 12.7 (Sustainable Movement) sub-section 12.7.4 (car parking standards) and 12.7.6 (Car Parking Design Layout) of the South Dublin County Development Plan 2022-2028 are relevant. Car parking standards are divided into two main categories Zone 1 and Zone 2.

The development site is located in Zone 2 (residential) which provides for brownfield / infill sites within Dublin City and Suburbs settlement boundary within 400-500 metres of a high quality public transport service (includes a train station, Luas station or bus stop with a high quality service). The proposed development is located to the north west of the terminus (Bus Stop ID 2353) of Dublin Bus Route 27, which provides a high frequency service from Jobstown via Tallaght and the city centre to Clare Hall. Table 12.26 (maximum car parking rates residential development) requires a maximum of 1 space per house.

Sub-section 12.7.6 (Car Parking Design Layout) provides that In-curtilage car parking will be considered to the front of the houses in lower density residential developments such as the subject proposal. It is required that a width of 3.5m between gate pillars shall not normally be exceeded. Chapter 7 (Sustainable Movement) Policy SM5 ensures that streets and roads within the County are designed to balance the needs of all road users and promote placemaking, sustainable movement and road safety providing a street environment that prioritises active travel and public transport.

Policy SM5 Objective 3 requires new streets and roads within urban areas to be designed in accordance with the principles, approaches and standards contained within the *Design Manual for Urban Roads and Streets* (2013 as updated 2019).

The internal Roads Report of the planning authority recommended refusal of permission on the grounds that the proposed development would introduce considerable additional risk to road and footpath users given the close proximity of the new vehicular entrances to a busy arterial traffic / bus route: *the proposed driveways are narrow and skewed and would require that drivers egress at an angle which would not be deemed safe*. The Report also considered that the proximity of the driveways to each other would also introduce additional risk.

Fortunestown Road was significantly trafficked on the day of my site visit. Cloonmore Drive is only one of two access points to the residential cul-de-sacs prefixed by 'Cloonmore' in the section of the housing estate located on the west side of Cloonmore Road comprising approximately 160 dwellings.

I would concur with the conclusion of the planning case officer that a traffic hazard would be created by the proposed development by reason of the location of the vehicular access points proximate to the junction of Cloonmore Drive and Fortunestown Road and would by reason of design be contrary to Policy SM5 of the South Dublin County Development Plan 2022-2028.

Infill development / corner – side gardens

- 7.6. The proposed development would be located in the side garden of the existing dwelling house at no.1 Cloonmore Drive. The appellant welcomes the positive points recorded in the case officer assessment, which include the merits of the proposal. The proposal was assessed against *inter alia* the requirements of Chapter 12 (Implementation and Monitoring) Section 12.6.8 (Residential Consolidation) Paragraph Infill Sites and Paragraph Corner / Side Garden Sites, which include a number of qualitative and quantitative criteria. I would concur with the planning case officer's assessment of the development proposal against the criteria requirements.

Other matters responded to by the appellant arising from the planning authority assessment

- 7.7. The other matters in the appeal statement relate to points of concern highlighted in the planning case officer assessment. The appellant has responded and clarified the design intent (where possible) principally for the following matters: elevation finish of the proposed gable south elevation, SUDS (compliance with relevant guidelines not demonstrated) and Landscape & Green Infrastructure. These matters are noted.

Conclusion

- 7.8. In conclusion, the proposed development for two private dwelling houses would materially contravene the "OS" zoning objective, which seeks to preserve and provide for open space and recreational amenities, where residential development is not permissible and only open for consideration in restrictive circumstances under H3 Objective 4, which is a specific objective to support community led older persons, social and council affordable housing. The applicant has not demonstrated

compliance with this provision. The proposed development would also by reason of its location on zoned open space be inconsistent with urban consolidation Policy CS7 Objective 3, for 'Dublin City and suburbs' which promotes and supports the development of undeveloped infill and brownfield zoned lands.

Furthermore, having regard to the policy framework provided by the South Dublin County Development Plan 2022-2028, including SM5 Street and Road Design, the proposed development would constitute a traffic hazard by reason of the location and configuration of the new vehicular accesses to the proposed dwellings onto Cloonmore Drive at the junction of Cloonmore Drive and Fortunestown Road and, as such, would be contrary to the proper planning and sustainable development of the area.

7.9. Appropriate Assessment Screening

The proposed development comprises two infill dwelling house in an established urban area.

Having regard to the nature and scale of the proposed development it is possible to screen out the requirement for the submission of an NIS.

8.0 Recommendation

- 8.1. I recommend the refusal of planning permission having regard to the following reasons and considerations:

9.0 Reasons and Considerations

Having regard to the reasons for refusal, the grounds of appeal, the policy framework provided by the South Dublin County Development Plan 2022-2028 including the zoning objective "OS", which seeks to preserve and provide for open space and recreational amenities, where residential development is not permissible and only open for consideration in restrictive circumstances under H3 Objective 4, which is a specific objective to support community led older persons, social and council affordable housing, it is considered that the proposed development of two private houses would not satisfy provision H3 Objective 4, and, as such, would materially contravene the "OS" zoning objective of the South Dublin County Development Plan

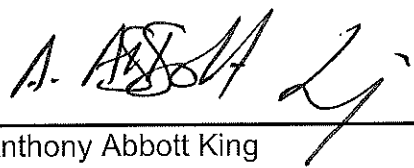
2022-2028 and would also be inconsistent with urban consolidation Policy CS7 Objective 3, for 'Dublin City and suburbs' which promotes and supports the development of undeveloped infill and brownfield zoned lands.

Furthermore, having regard to the policy framework provided by the South Dublin County Development Plan 2022-2028, including SM5 Street and Road Design, the proposed development would constitute a traffic hazard by reason of the location and configuration of the new vehicular accesses to the proposed dwellings onto Cloonmore Drive, proximate to Cloonmore Drive and Fortunestown Road junction and, as such, would be contrary to the proper planning and sustainable development of the area.

10.0 Reason for Refusal

1.	The applicant site is subject to the zoning objective 'OS' – 'To preserve and provide for open space and recreational amenities in the South Dublin County Development Plan 2022-2028. Residential use is open for consideration, only were H3 Objective 4, with lands zoned 'OS'. The applicant has failed to demonstrate compliance with this policy objective. In this regard the proposed development of 2 dwellings is a material contravention of the Fingal County Development Plan 2022-2028.
2.	The proposed development would endanger public safety by reason of traffic hazard and/or obstruction of road users, due to the proximity of the access points to a busy arterial route, as well as the narrow/skewed driveways and the proximity of the driveways to each other. This would be contrary to Policy SM5 Street and Road Design, which seeks to promote road safety, and would be contrary to the proper planning and sustainable development of the area.

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

A handwritten signature in black ink, appearing to read 'A. Abbott King', written over a horizontal line.

Anthony Abbott King
Planning Inspector

08 December 2023