



An  
Bord  
Pleanála

## Inspector's Report ABP-318427-23

<b>Development</b>	Alteration to previously approved F22A/0246 (ABP-314182-22) and planning permission for the construction of a house and associated site works.
<b>Location</b>	Rear of No. 1, Seabury Lawns, Malahide, Co. Dublin, K36 Y825.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	F23A/0505.
<b>Applicant</b>	Niall Barry.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party v Refusal of Permission
<b>Appellant</b>	Niall Barry.
<b>Observer(s)</b>	Paul Comiskey. Pat & Bernie O'Mahony.

**Date of Site Inspection**

22<sup>nd</sup> December 2023

**Inspector**

Bernard Dee

## **1.0 Site Location and Description**

The appeal site is located within an established suburban area to the west of Malahide town centre and which is characterised by semi-detached two storey dwellings. The site is located to the south of No. 1 Seabury Lawns in the rear garden area and to the north of Nos. 2 & 4 Seabury View.

The appeal site comprises a portion of a site to the rear (south) of No. 1 Seabury Lawns, Malahide, Co. Dublin. No. 1 Seabury Lawns is located on the corner of Seabury Lawns and Seabury Park. The site comprises a two storey semi-detached dwelling with an area of amenity space to its east side and rear. Car parking is provided within the dwelling's front setback and the appeal site has a stated area of c. 0.015ha (150m<sup>2</sup>).

## **2.0 Proposed Development**

Planning permission is sought for an amendment to an extant planning permission, ABP-314182-22 (Reg. Ref. F22A/0246), for a single storey, one bedroom dwelling with an integrated car port for 1 no. car space and a GFS of c. 50m<sup>2</sup>.

The proposed amendments are as follows:

- (i) provision of a recessed first floor level;
- (ii) the provision of 2 no. rooflights (1 no. atop ground floor and 1 no. atop first floor level);
- (iii) the provision of new door to link carport area to rear garden and bin store location; and
- (iv) all associated site works including landscaping, boundary works, and SuDs drainage necessary to facilitate the development.

The proposed dwelling would have 2 no. bedrooms and a GFS of 94.5m<sup>2</sup>. The maximum height of c. 5.6m of the previously approved single storey dwelling would increase to c. 6.34m to accommodate the additional recessed first floor level area.

Private amenity space is provided on the western side (rear) of the proposed dwelling (c.52m<sup>2</sup>) and will be directly accessible from the open plan kitchen/dining/living room at ground floor level. The proposal includes works to the existing boundary wall and the creation of a new vehicular entrance from Seabury Park on the eastern boundary of the appeal site.

### **3.0 Planning Authority Decision**

Fingal County Council refused planning permission for the development on the 18<sup>th</sup> October 2023 for the following reason:

*The proposed development by way of design, mass and finish in an area which maintains a distinct residential character is considered ad hoc and out of character. The development by way of the proposed design would be overbearing and would overlook adjacent properties, would fail to create a sense of visual harmony and would significantly detract from existing residential amenity. In addition, the proposal would have a negative visual impact on the area and set an undesirable precedent for similar development at this location. The proposed development is therefore considered to materially contravene the RS zoning objective for the area, would contravene Objectives DMSO31 and Objective SPQHO42 of the Fingal Development Plan 2023-2029 and would be contrary to the proper planning and sustainable development of the area.*

### **3.1. Planning Authority Reports**

#### **3.1.1. Planning Report**

The Planning Authority in their assessment of the application indicates that the principle of the proposed residential development is acceptable in this instance having regard to the applicable zoning objective. In terms of design and visual amenity, the Planning Authority raise concerns that the height and massing of the proposed is not in keeping with the character of the surrounding area and considerably exceeds the single storey dwelling permitted by the Board - ABP-314182-22 on this site.

The Planning Authority also considered the proposal to constitute an overdevelopment of the appeal site taking into consideration the site's restrictive nature, the pattern of development in the surrounding area and the planning history of the larger landholding, whereby an additional dwelling has already been permitted to the side of the existing dwelling, No. 1 Seabury Lawns. It was considered by the Planning Authority that the proposed two storey dwelling is visually incongruous within the existing streetscape and the proposal would give rise to a negative visual impact on the surrounding area. Concerns were also highlighted with respect to the open space provision for the proposed dwelling.

The Planning Authority also deemed the proposal to represent a traffic hazard due to the lack of sightlines and the poor intervisibility between pedestrians using the public footpath and vehicles exiting the site.

### 3.1.2. Other Technical Reports

- Water Services Department: No SuDs drainage details submitted with the application but this can be the subject of a condition in the event of a grant of permission being issued.
- Parks and Green Infrastructure Department: Report received requesting additional information regarding loss of street trees necessitated by the proposed development.
- Transportation Planning Section: No report received but previous transport report on Reg. Ref. F22A/0246 (ABP-314182-22) is still relevant.

### 3.1.3. Prescribed Bodies

- Irish Water: Report received stating that a pre-connection enquiry (PCE) be submitted to Irish Water..

#### 3.1.4. Third Party Observations

A total of 6 no. observations were received from Third Parties, two of whom are Observers to this appeal. The issues raised within the observations can be summarised as follows:

- The proposal will increase traffic and will represent a traffic hazard due to inadequate sightlines at the proposed vehicular entrance and its location on a bend.
- The proposal will result in increased car parking pressures and concerns with respect to the adequacy of the on-site car parking given that two bedrooms are proposed.
- The proposal is not in keeping with the character of the surrounding area and the proposal would set a poor precedent for similar development in the surrounding area.
- The high density proposal would represent a gross overdevelopment of the subject site.
- Concerns with respect to the loss of street trees and the impact of the proposal on the established character of the surrounding area.
- The proposal lacks appropriate separations distances and will adversely impact the residential amenity of properties within the vicinity of the site.
- Concerns with respect to overshadowing impacts due to two storey height of the proposed dwelling.

## 4.0 Planning History

### 4.1. Appeal Site

- **Ref. F22A/0246 (ABP-314182-22):** Planning permission granted on appeal for an alteration to permission Ref. F20A/0474 (construction of a new detached 2 storey dwelling to the east side of No 1 Seabury Lawns) and planning permission for the construction of a single storey dwelling to the rear of the existing dwelling on site. The Board Order was subject to 7 no. conditions.
- **Ref. F20A/0474:** Planning permission granted by the Planning Authority in May, 2021 for the construction of a new detached 2 storey dwelling to the side

of No. 1 Seabury Lawns, the provision of a new pedestrian access onto Seabury Park and the provision of a new vehicular access existing onto Seabury Lawns.

- **Ref. F20A/0434:** Planning permission refused by the Planning Authority in October, 2020 for development comprising the construction of a new detached 2 storey dwelling, with all associated site works, and provision of a new vehicular and pedestrian access exiting onto Seabury Park, Malahide, Co. Dublin. The application was refused for the following 6 no. reasons:
  1. *The proposed infill development is located within the Seabury housing area which maintains a distinct residential character typified by house typology and design and a sense of visual harmony. It is considered that the massing design and height of the proposed dwelling would give rise to a significant negative impact upon the visual amenities of the surrounding area and be incongruous with the streetscape. As such to permit the proposed development would materially contravene the RS zoning objective pertaining to the subject site and Objectives PM44, DMS39, DMS40 and DMS44 of the Fingal Development Plan 2017-2023 and would be contrary to the proper planning and sustainable development of the area.*
  2. *Having regard to the restrictive nature of the subject site and the pattern of development within the surrounding area the provision of this infill dwelling located to the rear of the overall landholding would constitute overdevelopment of the subject site.*
  3. *The proposed development in its current layout would give rise to a significant level of negative impact upon the existing residential amenity pertaining to the surrounding area in terms of overbearing, overshadowing and overlooking. To permit the proposed development in its current form would be contrary to objective DMS28 and to the RS zoning objective and also be contrary to the proper planning and sustainable development of the area.*
  4. *The proposed development in its current layout cannot achieve the required sightlines and as such constitutes a traffic hazard.*

5. *Vehicles emerging from the proposed parking area will be emerging blindly with no visibility of the pedestrian activity. The proposed development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area and be contrary to the proper planning and sustainable development of the area.*
  6. *Having regard to the lack of adequate information submitted with respect to the surface water drainage the applicant has failed to comply with the Sanitary Services Acts 1878-1964 (as amended) and the proposed development would therefore be prejudicial to public health.*
- **Ref. D09A/0179:** Planning permission refused by the Planning Authority in May, 2009 for development comprising the construction of a detached two storey house to side and new entrance. The application was refused for the following 2 no. reasons:
    1. *Having regard to the pattern of development in the area, it is considered that the proposed development of a new detached house in the side garden of the existing dwelling constitute over-development of a restricted site, would be out of character with the development in the area and would be visually intrusive from adjoining properties on Seabury Lawns and Seabury Park. Thus the proposed development would seriously injure the amenities of and depreciate the value of property in the vicinity.*
    2. *The development by virtue of minimum separation distances between the existing dwelling and eastern boundary of the site would set an undesirable precedent for the subdivision of plots within the estate for other similar developments, which would in themselves conflict with the pattern of development in this estate and would seriously injure the amenities of properties in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*



## 5.0 Policy and Context

### 5.1. Fingal County Development Plan, 2023-2029 (CDP)

The site is within an area zoned 'RS' of the Fingal County Development Plan (CDP), 2023-2029, the objective of which is 'to provide for residential development and to protect and improve residential amenity'. The vision for 'RS' zoned lands is to 'Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity'. Residential development is 'Permitted in Principle' on 'RS' zoned lands. All lands within the immediate surrounds of the subject site are also zoned 'RS' [Sheet 9 Malahide-Portmarnock].

### Chapter 3: Sustainable Placemaking and Quality Homes

#### 3.5.13 Compact Growth, Consolidation and Regeneration

- **Objective SPQHO39** – New 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 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 SPQHO43** – Contemporary and Innovative Design Solutions Promote the use of contemporary and innovative design solutions subject to design respecting the character and architectural heritage of the area.

## Chapter 14: Development Management Standards

### 14.5 Consolidation of the Built Form: Design Parameters

14.5.1 Achieving Consolidation - A cross-cutting theme of this Plan focuses on the achievement of consolidated development within existing settlements across Fingal and the many benefits arising from this approach. This is addressed in particular in Chapter 3 Sustainable Placemaking and Quality Homes and supported by the findings of the Urban Capacity Study 2021. Consolidation may be achieved through the re-use and/or repurposing of previously developed, under-utilised, vacant or derelict properties and sites within existing development boundaries. Brownfield sites offer one such opportunity and comprise previously developed land that is not currently in use but which fulfilled a previous function and is now available for re-development purposes. Similarly, infill development opportunities or gap sites between existing buildings of varying extent also offer opportunities to consolidate existing development and to enhance streetscapes.

#### Table 14.4: Infill Development Infill Development

Infill Development presents unique opportunities to provide bespoke architectural solutions to gap sites and plays a key role in achieving sustainable consolidation and enhancing public realms. Proposals for infill development will be required at a minimum to:

- Provide a high-quality design response to the context of the infill site, taking cognisance of architectural form, site coverage, building heights, building line, grain, and plot width.
- Examine and address within the overall design response issues in relation to overbearance, overlooking and overshadowing.
- Respect and compliment the character of the surrounding area having due regard to the prevailing scale, mass, and architectural form of buildings in the immediate vicinity of the site.

- Provide a positive contribution to the streetscape including active frontage, ensuring that the impacts of ancillary services such as waste management, parking and services are minimised.
- Promote active street frontages having regard to the design and relationship between the public realm and shopfronts of adjacent properties.

#### 14.8 Housing Development/Standards

14.8.1 Floor Areas - The minimum size of habitable rooms for houses shall conform with dimensions as set out in *Quality Housing for Sustainable Communities: Best Practice Guidelines for Delivering Homes Sustaining Communities 2007* or the appropriate National Guidelines standards in operation at the date of lodging the application for planning permission.

14.8.2 Separation Distances - A minimum standard of 22 metres separation between directly opposing rear first floor windows shall be observed, normally resulting in a minimum rear garden depth of 11 metres. However, where sufficient alternative private open space (e.g. to the side) is available, this may be reduced – subject to the maintenance of privacy and protection of adjoining residential amenities. All proposals for residential development over three storeys high, shall provide for acceptable separation distances between blocks to avoid negative effects such as excessive overlooking, overbearing and overshadowing effects and provide sustainable residential amenity conditions and open spaces. In certain instances, depending on orientation and location in built up areas, reduced separation distances may be acceptable. Any relaxing of standards will be assessed on a case-by-case basis and should not be seen as setting a precedent for future development. A separation distance of at least 2.3 metres should be provided between the side walls of each house, pair of semi-detached houses or each terrace of houses in order to allow for adequate maintenance and access.

- **Objective DMSO26 – Separation Distance between Side Walls of Units**  
Ensure a separation distance of at least 2.3 metres is provided between the side walls of detached, semi-detached and end of terrace units. (Note: This separation distance may be reduced on a case-by-case basis in relation to infill and brownfield development which provides for the regeneration of under-utilised lands and subject to the overall quality of the design and the schemes contribution to the streetscape. A statement demonstrating design mitigation and maintenance arrangements shall be submitted in such cases).

Table 14.8: Private Open Space for Houses

House type Minimum open space  
3 bedrooms or less 60 sq. m.  
4 or more bedrooms 75 sq. m.

- **Objective DMSO27 – Minimum Private Open Space Provision** Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows:
  - 3 bedroom houses or less to have a minimum of 60 sq. m. of private open space located behind the front building line of the house.
  - Houses with 4 or more bedrooms to have a minimum of 75 sq. m. of private open space located behind the front building line of the house.

Narrow strips of open space to the side of houses shall not be included in the private open space calculations.
- **Objective DMSO28 – Minimum Private Open Space Provision for Townhouses** Allow a reduced standard of private open space for one and two bedroom townhouses only in circumstances where a particular design solution is required such as to develop small infill/ corner sites. In no instance will the provision of less than 48 sq m of private open space be accepted per house.

## 14.10 Additional Accommodation in Existing Built-up Areas

14.10.1 Corner/Infill Development - The development of infill housing on underutilised infill and corner sites in established residential areas will be encouraged where proposals for development are cognisant of the prevailing pattern of development, the character of the area and where all development standards are observed. While recognising that a balance is needed between the protection of amenities, privacy, the established character of the area and new residential infill, such development provides for the efficient use of valuable serviced land and promotes consolidation and compact growth. Contemporary design is encouraged and all new dwellings shall comply with Development Plan standards in relation to accommodation size, garden area and car parking.

- **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 DMSO32** – Infill Development on Corner / Side Garden Sites  
Applications for residential infill development on corner/side garden sites will be assessed against the following criteria:
  - Compatibility with adjoining structures in terms of overall design, scale and massing. This includes adherence to established building lines, proportions, heights, parapet levels, roof profile and finishing materials.
  - Consistency with the character and form of development in the surrounding area. " Provision of satisfactory levels of private open space to serve existing and proposed dwelling units.
  - Ability to safeguard the amenities of neighbouring residential units.
  - Ability to maximise surveillance of the public domain, including the use of dual frontage in site specific circumstances.

- Provision of side/gable and rear access arrangements, including for maintenance.
- Compatibility of boundary treatment to the proposed site and between the existing and proposed dwellings. Existing boundary treatments should be retained/ reinstated where possible.
- Impact on street trees in road-side verges and proposals to safeguard these features.
- Ability to provide a safe means of access and egress to serve the existing and proposed dwellings.
- Provision of secure bin storage areas for both existing and proposed dwellings.

## **5.2. Natural Heritage Designations**

The nearest designated site is the Malahide Estuary SAC (Site Code: 000205) and the Malahide Estuary SPA (Site Code: 004025), located c. 700m to the north of the site. The proposed Natural Heritage Area (pNHA): Malahide Estuary, is also located c. 700m east of the site.

## **5.3. EIA Screening**

Having regard to the nature and scale the development which consists of the construction of a single house in a suburban location, 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**

The main points raised in the First Party appeal can be summarised as follows:

- The proposed development is fully compliant with Regional and National Planning Guidelines, which support the more efficient and sustainable use of zoned and serviced lands.

- The proposed development accords with the key objectives as included within the Regional Spatial and Economic Strategy for the Eastern and Midlands Region (2019-2031) in that it contributes to growth targets for serviced brownfield sites.
- The proposed development is consistent with the Project Ireland 2040 National Planning Framework where the target is for at least 40% of all new housing to be delivered within the existing built-up areas of cities, towns and villages on infill and/or brownfield sites.
- The proposed dwelling is compliant with the density, separation distance and private open space standards specified in the Draft 'Sustainable and Compact Settlements Guidelines for Planning Authorities' (2023).
- The proposed development is consistent with the 'RS' zoning objective of the site as per the Fingal County Development Plan 2023-2029 as it does not have an adverse impact on adjacent residential amenities and accords with the proper planning and sustainable development of the area.
- The proposed development is compliant with the aims of compact and sustainable growth set down in Chapter 2 of the Development Plan as per NPF and RSES objectives.
- The proposed development can be classified as an infill development and it complies with the various qualitative and quantitative standards as set out within Table 14.4, Chapter 14 of the County Development Plan with respect of residential infill developments and with Objective DMSO31.
- The proposed dwelling is subordinate in scale and massing to the existing dwelling and complies with Objective DMS39 of the County Development Plan.
- Whilst the site is a backland development rather than a corner site development, it is contended that the proposed development and the alternative design option comply with Objective DMS40 of the County Development Plan.
- The proposed dwelling is compliant with Objective SPQHO43 of the County Development Plan, in which a dwelling with a contemporary design is proposed.

- The proposed development provides an appropriate response to the quantity and quality of private open space.
- The subject site presents an opportunity to provide an additional dwelling on site. Precedent examples for similar types of infill developments have been identified within the Fingal administrative area which aid in justifying the proposal and are detailed within the appeal submission and to which the Board's attention is directed.
- The proposed development does not breach any standards relating to separation distances, overlooking or overshadowing of neighbouring properties.

## **6.2. Planning Authority Response**

Having regard to the ground of the First Party appeal, the Planning Authority do not feel that the arguments contained therein would overcome the reason for refusal issued by the Planning Authority as the proposed development would have significant adverse impacts on the visual and residential amenity of the area if permitted.

In the event of a grant of permission, it is requested that provision be made in the determination for applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

## **6.3. Observations**

A total of 2 no. separate observations have been submitted from:

- Paul Comiskey.
- Pat & Bernie O'Mahony.

The relevant planning issues raised in these Observations are summarised as follows:

- A third house on this site would represent a gross overdevelopment of the overall site.
- Concerns with respect to the density of the proposed development.



- The proposal is not in keeping with the character of the area and fails to accord with Objective DMSO40 of the current CDP.
- The current application would compromise the residential amenity of properties within the vicinity of the site and would set an undesirable precedent for the subdivision of plots within the estate and for other similar developments.
- The proposal is in conflict with the pattern of development in the area and contrary to the proper planning and sustainable development of the area.
- Concerns with respect to the creation of a new vehicular entrance and associated traffic related concerns.
- Concerns with the lack of vehicular sightlines.
- Concerns over the adequacy of the proposed car port.
- The proposed vehicular entrance does not comply with TII Document DN-GEO-03060 Geometric Design of Junctions. It is contended that section 5.6.3.7 of the TII document which uses the centre line of the entrance as the basis for determining the visibility splay, is not the appropriate standard for junctions with an acute angle. It is argued that a design standard such as 'Cork County Council - Making Places – a design guide for residential estate development', which measures sight splays from the edges of the entrance is the appropriate standard.
- In terms of sightlines, DMURS states that the X distance may be reduced to 2m in certain circumstances where vehicle speeds are low. The Applicant has not undertaken traffic surveys to justify this reduction in the standard.
- The Applicant has not undertaken an assessment of the cumulative effect that trees, located within the visibility splays, would have on emerging vehicles.
- On-street car parking is at a premium and the proposal will result in the loss of on-street car parking spaces.
- Seabury Park is heavily trafficked and is the sole access road to the adjacent Lissadel development.
- Concerns with respect to the loss of existing street trees.
- Concerns with respect to lack of detail regarding boundary treatments.
- Drainage related concerns associated with the proposed development.

- There is a lack of a third party consent for works that would be required to achieve adequate sightlines that are outside the control of the applicant.

## **7.0 Assessment**

The main issues are those raised in the Planning Report, the consequent reasons for refusal and the Appellant's grounds for appeal. Overall, I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Design, Visual Amenity & Neighbourhood Character
- Vehicular Access
- Residential Amenity & Open Space
- Material Contravention Issue
- Appropriate Assessment

### **7.1. Principle of Development**

7.1.1. The proposal seeks planning consent for an amendment to an extant permission (F20A/0474) comprising modifications to the site boundaries. The proposal also seeks planning consent for the construction of a new two storey detached dwelling within the rear amenity space of the existing dwelling on site. I note that the site is located on lands zoned 'RS' of the Fingal County Development Plan (CDP), 2023-2029, the objective of which is 'to provide for residential development and to protect and improve residential amenity'. Residential development is identified as a permitted in principle use on lands zoned 'RS'. Having regard to the pattern of development in the surrounding area and the applicable zoning designation, I am satisfied that the principle of a new dwelling at this location is acceptable.

### **7.2. Design, Visual Amenity & Neighbourhood Character**

7.2.1. The appeal site is located within an established residential area, typically characterised by double storey, semi-detached dwellings of a similar architectural style. The appeal site is positioned on the corner of Seabury Lawns and Seabury

Park and benefits from a generous area of amenity space to its side and rear which is atypical of the surrounding area. I note that there is an extant planning permission on the larger landholding for the construction of a double storey dwelling to the side of No. 1 Seabury Lawns (north of the appeal site).

- 7.2.2. Given the infill nature of the proposed development, regard must be given to Objective DMSO39 of the current CDP. The policy notes that “New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings”. Within their assessment of the planning application, the Planning Authority have raised concerns with respect to the height and massing of the proposed dwelling, which they contend is not in keeping with the host dwelling and the dwellings located within the wider Seabury area.
- 7.2.3. I note that dwellings within the wider Seabury area display a level of uniformity and consistency in terms of their architectural style and detailing – typical suburban estate layout and architectural style. Notwithstanding this, the appeal site is not located within an architectural conservation area, nor is the site located within close proximity to a Protected Structure. The proposed two storey dwelling which was refused by the Planning Authority has a distinctively contemporary architectural style. Although the proposal represents a departure from the prevailing neighbourhood character in design terms, the proposed dwelling has a form which is subordinate in scale to the existing dwelling on site, the permitted dwelling on the larger landholding and dwellings within the surrounding area of the appeal site.
- 7.2.4. The proposed dwelling with a maximum height of 6.34m compares with ridge height of 7.66m for 1 Seabury Lawns to the north (applicants dwelling) and 7.66m ridge height for Nos. 2 and 4 Seabury View to the south of the appeal site. This height difference is due to the proposed flat roofed structure and hence the absence of a pitched roof which would increase the height of the structure. For comparison, ABP-314182-22 (Ref. F22A/0246), the single storey dwelling previously permitted on the appeal site has a ridge height of 3.5m and ABP-314182-22 (Reg. Ref. F22A/0246), for a two storey dwelling permitted immediately north of the appeal site and east of 1 Seabury Lawn has a ridge height of 5.7m.

- 7.2.5. I am therefore satisfied that the dwelling is respectful of the height and massing of dwellings within the built context and the proposed development is therefore consistent with the policy provisions set out under Objective DMSO39 of the current CDP. I also note that the dwelling permitted under Reg. Ref. F20A/0474 has a contemporary architectural expression with a flat roof form. I do not consider the proposal to be visually incongruous within the existing streetscape context and I therefore consider the proposal to be acceptable having regard to visual amenity of the surrounding area.
- 7.2.6. Within the Planning Authority's reason refusal, reference is made to the proposals material breach of Objectives DMSO31 and SPQHO41 of the current CDP. Objective DMSO31 seeks to ensure that *"New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings."* The area has a traditional suburban character and I am satisfied that the proposed dwelling has been designed to a high standard and can make a positive contribution to the existing streetscape.
- 7.2.7. Objective SPQHO41 seeks to *"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"*, and as noted in the foregoing, I am satisfied that the proposal responds appropriately to the character of the surrounds and it will not detract from the visual amenity of the surrounding area.
- 7.2.8. Having regard to the foregoing, I am satisfied that the proposed development would in fact represent an efficient use of a brownfield site which benefits from good access to public transport and range of amenities and services given its location relative to Malahide town centre. This is particularly relevant in the context of national policy objectives which seek to ensure that 40% of future housing delivery is to be within the existing footprint of built up areas (National Policy Objective 3a) and which seeks to deliver at least half (50%) of all new homes that are targeted in the five Cities and suburbs of Dublin, Cork, Limerick, Galway and Waterford, within their existing built-up footprints (National Policy Objective 3a). Section 2.6 (Securing Compact and Sustainable Growth) of the National Planning Framework (NPF) also highlights that

the preferred approach to development would be compact development that focuses on reusing previously developed, 'brownfield' land, building up infill sites, which may not have been built on before and either reusing or redeveloping existing sites and buildings.

7.2.9. I consider this to be directly applicable to the development proposal given the national policy objectives which now seek to secure compact and sustainable growth. I am therefore satisfied that the development proposal is in accordance with local through to national policy objectives and I recommend that planning permission be granted for the proposed development.

### **7.3. Vehicular Access**

7.3.1. The proposed development includes the construction of a new vehicular entrance at the southern end of the site's boundary to Seabury Park. The entrance will lead to 1 no. car parking space located on the southern side of the proposed dwelling and will be enclosed by a car port formed by the first floor projecting over the parking space. The Planning Authority refused planning permission previously for proposed residential development on the appeal site as it was considered that previous proposals could not achieve the required sightlines and would therefore constitute a traffic hazard. In addition, concerns were highlighted that vehicles exiting the site would be emerging blindly with no visibility of pedestrian activity. I note that a number of Third Party observations have raised concerns with respect this aspect of the proposed development and the loss of street trees as a result of the creation of a new entrance at this location.

7.3.2. However, as per the decision on ABP-314182-22 (Ref. F22A/0246), I do not believe that traffic hazard is an issue with regard to the proposed development given the fact that Seabury is an internal estate road with consequent relatively low traffic frequency and speeds and not a heavily trafficked local or regional road.

### **7.4. Residential Amenity & Open Space**

7.4.1. The Planning Authority in their assessment of the application, and consequent reason for refusal, did not specifically deem the proposal as constituting an

overdevelopment of the site taking into consideration, inter alia, the pattern of development in the surrounding area, the permitted and proposed dwelling on site and the restrictive nature of the site. The proposed dwelling is located to the north of the properties on Seabury View, I am satisfied that the proposal will not unduly compromise the residential amenity of the properties to the south of the site by reasons of overshadowing, loss of light or by being visually overbearing.

7.4.2. Having regard to the height of the proposed dwelling and the separations distances provided, I am satisfied that the proposal will not unduly compromise the residential amenity of the properties to the west of the site by reasons of overshadowing, loss of light or by being overlooked due to the fact that the rear first floor windows light a bathroom (presumably obscure glass will be utilised) and stair landing and any views of neighbouring properties will be incidental or at oblique angles..

7.4.3. In terms of the residential amenity of the existing and permitted dwelling on the larger landholding, I have reviewed the application documentation submitted under Reg. Ref. F20A/0474 and both the existing and permitted dwellings have 3 no. bedrooms. Given a stated minimum of 60sq.m. of private open space is provided to the rear of each of these dwellings, I am satisfied that the proposal is in compliance with Objective DMS87 of the current CDP which requires 3 no. bedroom houses or less to have a minimum of 60sq.m. of private open space located behind the front building line of the house. Although I acknowledge that the proposed dwelling shall directly abut the southern boundary of the permitted dwelling to the north, I am satisfied that the proposed development will not unduly compromise the residential amenity of the existing and permitted dwelling in the vicinity of the appeal site and that the proposed dwelling is therefore considered acceptable having regard to the residential amenity of the surrounding area.

7.4.4. I note that the proposed dwelling will be served by an area of amenity space to its rear measuring c. 52sq.m. Although this is below the minimum standard prescribed under Objective DMS87 of the current CDP, policy Objective DMS88 allows for 'a reduced standard of private open space for 1 and 2 bedroom townhouses only in circumstances where a particular design solution is required such as to develop small infill/ corner sites'. The policy states no instance will the provision of less than 48sq.m. of private open space be accepted per house. Given the nature of the

proposal (i.e. small infill/corner site), I am satisfied that policy Objective DMS88 is relevant to the consideration of the application. The open space area will be benefit from a westerly orientation and is directly accessible from the main living quarters of the proposed dwelling. Overall, I am satisfied that the proposal will afford an acceptable standard of amenity to its future occupants and is in accordance with the pertinent policy of the current CDP

7.4.5. On the basis of the foregoing, I do not consider the proposal in instance to represent an overdevelopment of the appeal site and the proposed development will in fact represent a more efficient and sustainable use of this serviced brownfield site, where there is regional and national policy support for development of this nature. I therefore recommend that planning permission be granted for the proposed development.

### **7.5. Material Contravention Issue**

- 7.5.1. The reason for refusal cited by the Planning Authority relates to the belief that the proposed dwelling would have an adverse impact on the visual and residential amenity of the area and that the *“proposed development is therefore considered to materially contravene the RS zoning objective for the area, would contravene Objectives DMSO31 and Objective SPQHO42 of the Fingal Development Plan 2023-2029”*.
- 7.5.2. In cases where the Board may be minded to grant permission where a Planning Authority has refused permission on the basis of a material contravention of the Development Plan, the provisions of Section 37 of the Planning and Development Act 2000 (as amended) apply.
- 7.5.3. Section 37(2)(a) states that *“Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates. (b) 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 paragraph (a) where it considers that—*

- (i) the proposed development is of strategic or national importance,*
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to the regional spatial and economic strategy for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*
- (iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

*(c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan”.*

7.5.4. In my opinion, parts (i) and perhaps (iv) do not apply to the appeal before the Board but I am of the opinion that the provision of parts (ii) and (iii) apply to the proposed conversion. It should be noted that only one of the criteria outlined above needs to be satisfied in order for the Board to grant permission in this instance if it is so minded.

7.5.5. However, the reason for refusal with reference to the issue of a material breach of the Development Plan objectives cites the contravention of Objectives DMSO31 and Objective SPQHO42 of the Fingal Development Plan 2023-2029.

7.5.6. Objective DMSO31 requires that *“New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings”* and Objective SPQHO42 aims to *“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”*.



- 7.5.7. Section 37(2)(a)(ii) permits the Board to grant permission in material contravention cases where *“there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned”*. I am of the opinion that Objective DMSO31 seeks to encourage infill development while at the same time preserving the character of the area, while Objective SPQHO42 seeks to encourage infill development subject to the protection of the established character of the area.
- 7.5.8. However, Objective SPQHO43 promotes *“the use of contemporary and innovative design solutions subject to design respecting the character and architectural heritage of the area”*, which by definition will have an impact on the character of the area – the Development Plan implies that said effect will be a positive one. I find that there is a certain ambiguity between the three objectives cited in the preceding paragraphs and that this permits the Board to grant permission for the proposed development in accordance with the provisions of Section 37(2)(a)(ii) if it is minded to do so.
- 7.5.9. In addition, as the proposed development complies with the national and regional policies of utilising brownfield sites for residential development and guiding new residential development into existing urban areas (see the voluminous reference to national and regional guidance on this issue in the First Party appeal), that the provisions of Section 37(2)(a)(iii) apply in this case and that there is no obstacle to the Board granting planning permission if it is minded to do so in this instance.

## **7.6. Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development, a dwelling on a serviced site, and to the nature of the receiving environment, with no direct hydrological or ecological pathway to any European site, no appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site

## 8.0 Recommendation

A grant of permission is recommended for the reasons and considerations set down below.

## 9.0 Reasons and Considerations

Having regard to Project Ireland 2040: The National Planning Framework, and the relevant objectives which seek to consolidate residential growth in urban areas, and the provisions of the Fingal Development Plan 2023-2029, including the RS zoning objective for the site, the specific characteristics of the site and the pattern of development in the surrounding area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would not be prejudicial to public health, would not represent a traffic hazard and would be in accordance with Objectives DMSO31 and Objective SPQHO42 of the Fingal Development Plan 2023-2029, and would constitute an acceptable form of development at this location. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	The proposed development shall comply with the plans and particulars lodged with the application on the 28 <sup>th</sup> day of August 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. Reason: In the interest of clarity.
2.	Prior to commencement of development, the Applicant shall enter into water and waste water connection agreement(s) with Irish Water and

	adhere to the standards and conditions set out in that agreement. All development shall be carried out in compliance with the Irish Water Standards codes and practices. Reason: In the interest of public health.
3.	Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the Planning Authority for such works and services. Reason: In the interest of public health.
4.	The design and layout of the proposed vehicular entrance shall comply with the requirements of the Planning Authority. In default of agreement the matter(s) in dispute shall be referred to An Bord Pleanála for determination. Reason: In the interest of proper planning and sustainable development.
6.	Development described in Classes 1 or 3 of Part 1 of Schedule 2 to the Planning and Development Regulations, 2001 (as amended), or any statutory provision modifying or replacing them, shall not be carried out within the curtilage of the proposed dwelling without a prior grant of planning permission. Reason: In the interest of residential amenity.
7.	Site development and building works shall be carried out only between the hours of 08:00 to 19:00 Mondays to Fridays inclusive, between 09:00 to 14:00 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority. Reason: In order to safeguard the amenities of property in the vicinity.
8.	The Applicant shall pay to the Planning Authority a financial contribution as a special contribution under section 48(2)(c) of the Planning and Development Act 2000 (as amended) in respect of replacement tree planting in the vicinity of this development, as a result of the requirement to remove street tree/s to provide vehicular access to the site. This is to ensure that there is no net loss of tree canopy cover in the area. The amount of the contribution shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála for determination. The contribution shall be paid prior to commencement of development or in such phased payments

	as the Planning Authority may facilitate. Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.
9.	The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000 (as amended). The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme. Reason: It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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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**Bernard Dee**  
**Planning Inspector**  
**9<sup>th</sup> January 2024**