



An  
Bord  
Pleanála

## Inspector's Report

### ABP-318594-23

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<b>Development</b>	Demolition of glasshouses, construction of 4 houses, new access points and site development works.
<b>Location</b>	South Shore Road, Rogerstown, Rush, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F23A/0542
<b>Applicant(s)</b>	Anne McCrudden
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Anne McCrudden
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	27 <sup>th</sup> September 2024
<b>Inspector</b>	Philip Maguire

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## 1.0 Introduction

- 1.1. An appeal has been made to An Bord Pleanála ('the Board') by Mrs. Anne McCrudden under the provisions of Section 37 of the Planning and Development Act 2000, as amended ('the Act'), following a refusal of permission under Section 34 of the Act.
- 1.2. This Inspector's Report (IR) and recommendation is made pursuant to Section 146(2) of the Act. The Board are required to consider both before determining the matter.

## 2.0 Site Location and Description

- 2.1. Situated along and to the northeastern side of the South Shore Road, the appeal site is located on the southwestern outskirts of Rush in north County Dublin, c. 2km from the town centre. The site addresses Rogerstown Estuary and lies due north of Rogerstown Pier and northwest of Rush Sailing Club. The surrounding area is characterised by detached houses ribboning along the adjoining road network and interspersed with small horticultural holdings consisting mainly of glasshouses. Some amenity grassland / open space bounds the southwestern side of Shore Road South.
- 2.2. The appeal site is rectangular shaped with a northeast-southwest alignment. It covers an area of c. 0.31ha and has a road frontage of c. 30m. A laneway off South Shore Road flanks part of the northwestern boundary and provides access to other glasshouses perpendicular to the site. There are four detached dormer-style houses addressing South Shore Road to the northwest of the site and a two-storey detached house ('Riverside') to the southeast, albeit set slightly further back from the road edge. A concrete lane to the side of this house provides access to a polytunnel and shed to the rear. The curtilage of houses along Channel Road adjoin the site to the northwest.
- 2.3. The appeal site is generally flat around 3mAOD with a moderate incline of c. 1.5m from the roadside to the rear. The site consists of two glasshouses, a shed and water tank. The roadside boundary consists of a low block wall with entrance framed by capped piers. The northeastern boundary, insofar as could be accessed, is defined by a block wall and the external wall of the shed. The southeastern boundary is similarly defined albeit capped to the front of the building line of the adjacent house. The rear of the appeal site was inaccessible given the extent of glasshouse coverage however there appeared to be extensive mature trees forming a silvan backdrop.

### 3.0 Proposed Development

3.1. Permission is sought to demolish two glasshouses etc. and construct four houses.

3.2. The proposed development is described in the statutory notices as:

*The demolition of existing glasshouses, and the construction of 4 no. new detached two storey dwelling houses, provision for storm water percolation, within curtilage parking provision for 2 no. vehicles for each dwelling, new vehicular access and new internal access road, from South Shore Road to include goods vehicles turning provision, hard and soft landscaping, access road and pedestrian walkways, services (incl. SUDS) and all other ancillary and associated site development works.*

3.3. The following table summarises the key elements of the proposed development:

Site Area	0.3081ha (stated as 0.03081ha in Application Form)
Dwelling Units	4 no. houses (4 no. four-bed)
Density	13dph
Building Height	2-storey (c. 6.20m-6.95m)
Floor Demolition Areas (sq.m)	2,472sq.m
Proposed (sq.m)	855.94sq.m
Site Coverage	16% (calculated as 479.67sq.m)
Plot Ratio	0.28
Part V	N/a
Open Space	0
Car Parking Spaces	8 (2 per residential unit)

**Table 1 – Key Figures**

3.4. In addition to the supporting planning statement (CWPA Planning & Architecture, September 2023), planning application documents include:

- Appropriate Assessment – NIS Screening (ESC Environmental Ltd, June 2023)
- Engineering Assessment Report (Waterman Moylan, September 2023)

- Flood Risk Assessment (Waterman Moylan, September 2023)

3.5. In addition to an appeal statement (CWPA Planning & Architecture, November 2023), appeal documents include:

- Natura Impact Statement (ESC Environmental Ltd, November 2023)

## 4.0 Planning Authority Decision

### 4.1. Decision

4.1.1. Permission was refused on 7<sup>th</sup> November 2023 for the following reasons:

1. *The proposed development of four dwellings on the subject site in the South Shore Area of Rush would constitute a multiple unit housing scheme in an area which is subject to Map Based Objective 13 of the Fingal Development Plan 2023 - 2029 where the objective is to exclude multiple unit housing estates in the South Shore area of Rush. The proposed development would therefore contravene materially Map Based Objective 13 of the Fingal Development Plan 2023-2029 and would, be contrary to the proper planning and sustainable development of the South Shore area.*
2. *Having regard to the location of the proposed development in the South Shore area of Rush, to the west of the town centre on RU zoned lands, and having regard to Objective SPQHO92 of the Development Plan relating to applications for Houses within the South Shore Area, it is considered that the applicant has not demonstrated eligibility to be considered for dwellings within this rural area and the development would therefore contravene materially Objective SPQHO92 of the and the Rural Settlement Strategy of the Fingal Development Plan 2023-2029 to permit the proposed development on RU zoned lands where the principle of residential development is limited to set criteria and where residentially zoned land, appropriate to facilitate a multiple unit scheme is available in the wider area, it is considered that the development would be contrary to the national guidance under the National Planning Framework and contrary to the proper planning and sustainable development of the area.*

3. *Based on the information submitted, it cannot be concluded with certainty that there is no connectivity between the subject site and Rogerstown Estuary Special Area of Conservation (SAC) and Rogerstown Estuary Special Protection Area (SPA). It is further considered that insufficient information has been submitted to enable the Planning Authority to determine whether or not the proposed development would, either alone or in-combination with other plans or projects, in view of best scientific knowledge and in view of the sites' conservation objectives, be likely to have significant effects on any European site. As such the proposed development would be contrary to the proper planning and sustainable development of the area.*
4. *The proposed development in its current format would seriously injure the amenities of property in the immediate area by way of overlooking and as such would be contrary to proper planning and sustainable development.*
5. *Insufficient information has been submitted to enable the Planning Authority to fully assess the transportation aspects of the proposed development. In the absence of such information, the proposal would be contrary to the proper planning and sustainable development of the area.*

#### 4.2. **Planning Authority Reports**

- 4.2.1. The Planning Officer's report (07/11/23) can be summarised as follows:

##### *Principle of Development*

- Notes the rural zoning ('RU') where residential development is permissible subject to compliance with the Rural Settlement Strategy.
- Also notes local objectives 13 and 14, relating to the South Shore Road, and considers the proposal generally acceptable subject to the overall policies and objectives for the zone.

##### *Rural Settlement Strategy*

- Has regard to Section 3.5.15.8 and objective SPQO92 of the Fingal Development Plan and notes that an occupancy condition(s) is required for any subsequent grant of permission at this location.

- States that the applicant has not submitted any information demonstrating compliance with the Rural Settlement Strategy or specific objectives for the South Shore Road area.
- Notes the substantive content of the supporting Planning Statement and accepts that the Development Plan encourages and promotes the re-use of brownfield/infill sites, but states that the proposal does not demonstrate compliance with the policies and objectives relevant to the subject site.
- It also notes that the applicable zoning specifically excludes multiple unit development and states that the 1<sup>st</sup> refusal reason under PA ref. F23A/0182 has not been overcome.

#### *Residential Units*

- Notes the submission of a HQA in accordance with DMSO20.
- States that the proposal compliant with objectives DMSO19 (and Section 14.8.1), DMSO23, DMSO26 and DMSO27 regarding design and floor area requirements, separation distances, flank wall separations, and private amenity space.
- Considers adequate levels of daylight/sunlight will be provided and notes that whilst bin storage has not been addressed, it could be accommodated within the rear gardens in order to comply with objective DMSO239.

#### *Layout, Design & Visual Impact*

- Considers the dwellings inconsistent with the character of the area, having regard to the contemporary design and building heights, noting that they would project slightly beyond the ridge height of neighbouring properties.
- Considers that the proposal would lead to a suburban pattern of development in a rural area and materially contravene Local Objective 13 and the RU zoning.
- States that the 4<sup>th</sup> refusal reason under PA ref. F23A/0182 has not been overcome.

#### *Impact on the Residential Amenity of the Area*

- Notes that a number of windows, together with a balcony (Houses 1 and 2), would overlook the adjacent house to the southeast, impacting on residential amenity.

- Considers that the wraparound balcony design element (Houses 3 and 4) would also impact on the amenity future occupiers and should be omitted.
- States that the 4<sup>th</sup> refusal reason under PA ref. F23A/0182 has not been overcome.

#### *Open Space, Boundaries and Landscaping*

- Notes the Highly Sensitive Landscape designation and objective to 'Preserve Views' along the South Shore Road to the southwest.
- Also notes the landscaping along the access roadway and absence of dedicated open space as acknowledged by the parks section, who consider that a financial contribution in lieu of the 350sq.m shortfall would be required.

#### *Access, Parking and Transport*

- Notes that the roads section have no objection in terms of parking and layout but states that further information would be required to address inconsistencies in relation to the entrance layout, the shared surface finishes and street lighting.
- States that the 5<sup>th</sup> refusal reason under PA ref. F23A/0182 has not been overcome.

#### *Flooding, Services and Drainage*

- Notes the submitted Flood Risk Assessment which includes mitigation and preventative measures.
- Also notes that the water services section and Uisce Éireann have no objections.
- States that the 2<sup>nd</sup> refusal reason under PA ref. F23A/0182 has been overcome.

#### *Other Items*

- Notes the recommendation from the waste section regarding a RWMP condition.

#### *Appropriate Assessment Screening*

- Notes the AA screening report conclusion regarding the unlikelihood of any significant impacts either directly or indirectly on the Rogerstown SAC and SPA.
- Outlines information gaps in the screening and states, albeit erroneously, "that the applicant has not overcome refusal reason no. 4 of Reg Ref F23A/0182".

#### *EIA Screening*

- States that EIA is not required.

#### 4.2.2. Other Technical Reports

- Parks (20/10/23): No objection subject to condition.
- Roads (17/10/23): Further information requested.
- Waste (29/09/23): No objection subject to condition.
- Water (09/10/23): No objection subject to condition.

#### 4.3. Prescribed Bodies

- Uisce Éireann (21/10/23): No objection subject to condition.

#### 4.4. Third Party Observations

None.

### 5.0 Planning History

#### 5.1. Relevant to appeal site:

5.1.1. PA ref. F23A/0182 – in June 2023, the planning authority refused permission for the demolition of glasshouses and construction of 4 no. houses for the following reasons: (1) material contravention of the rural settlement strategy and objective SPQHO90 of the Fingal Development Plan 2023-2029 and contrary to the National Planning Framework and Ministerial guidelines; (2) flooding; (3) Appropriate Assessment - not possible to determine whether or not the proposed development, either alone or in combination with other plans and projects, would have a likely significant effect on any European site; (4) injurious to the residential and visual amenity; and (5) insufficient information submitted to fully assess the transportation aspects of the proposal.

5.1.2. PA ref. F21A/0660 – in February 2022, the planning authority refused permission for removal of glasshouses and construction of 4 no. houses for the following reasons: (1) material contravention of Green Infrastructure Map Based Objective 21 and the rural zoning objective of the Fingal Development Plan 2017-2023; (2) material contravention of the rural settlement strategy, including objectives RF43 and RF44, of the Fingal Development Plan and contrary to the Ministerial guidelines; (3) flooding; (4) Appropriate Assessment - not possible to determine whether or not the proposed

development, either alone or in combination with other plans and projects, would have a likely significant effect on any European site and therefore material contravention of objective RF47 of the Fingal Development Plan; (5) injurious to the residential amenities of adjoining residences by reason of overlooking; (6) insufficient information submitted to fully assess the transportation aspects of the proposal; and (7) contravention of objective DMS57B of the Fingal Development Plan in relation to the provision of public open space and poor quality pedestrian and cycle environment.

- 5.1.3. PA ref. F04A/1811 – in February 2005, the planning authority granted permission for 6 no. houses. An appeal under ABP ref. PL 06F.211267 was withdrawn in July 2005.

5.2. Adjacent sites:

*Channel Road, Rush (0.15km northeast)*

- 5.2.1. PA ref. F17A/0511 – in November 2017, the planning authority granted permission for revisions to a previously permitted house (PA ref. F16A/0278) including height increase to two-storey and incorporating a 'Juliette' balcony at first floor to the rear.

*Channel Road, Rush (0.75km northeast)*

- 5.2.2. PA ref. F19A/0385 – in April 2020, the Board overturned a decision of the planning authority and granted permission (ABP-305876-19) for 4 no. houses in a 'RU' zoning. Having regard to the scale, form and design and the pattern of development in the surrounding area, the Board considered that the proposed development would not adversely impact on visual or residential amenity and would be acceptable in terms of traffic safety. Also, having regard to the provisions of Section 37(2)(b)(iii) and (iv) of the Planning Act, and, in particular, to Government policy, as expressed in the National Planning Framework (NPF), and having regard to the pattern of development in the area, the Board considered that permission should be granted for the development.

*Channel Road, Rush (0.45km northeast)*

- 5.2.3. PA ref. F20A/0678 – in July 2021, the Board upheld a decision of the planning authority and refused permission (ABP-309734-21) for 4 no. houses in a 'RU' zoning citing contravention of the Rural Settlement Strategy of the 2017-2023 Plan as it related to the South Shore area and contravention of Variation No. 2, which incorporated the NPF and RSES into the Plan, in particular objectives SS01a, SS02, SS02b and SS03.

## 6.0 Policy Context

### 6.1. Local Planning Policy

#### *Fingal Development Plan 2023-2029*

- 6.1.1. The current Development Plan came into effect on 5<sup>th</sup> April 2023. The Plan was varied by Ministerial Direction on 28<sup>th</sup> July 2023. The planning authority decision of 7<sup>th</sup> November 2023 was made under the provisions of this Plan, as will this appeal.
- 6.1.2. The site is zoned 'RU - Rural' with an objective to *'protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage'*. Residential uses are 'permitted in principle' in this zoning subject to compliance with the Rural Settlement Strategy.
- 6.1.3. The site also lies within a 'Site Specific Objective Boundary' which is subject to Local Objectives Points (LOP) 13 and 14 as detailed in Appendix 8 (Map Based Objectives).
- 6.1.4. A section of the GDA Cycle Network Plan is shown along the South Shore Road.
- 6.1.5. The South Shore Road separates the appeal site from 'Open Space' associated with Rogerstown Estuary with a zoning objective to *'preserve and provide for open space and recreational amenities'*. I also note that the appeal site lies within Flood Zone B.
- 6.1.6. The site also is within the Estuary Landscape Character Type which is of exceptional value and highly sensitive. A 'Preserve Views' objective traverses this green area and it is subject to LO Point 15 (marina related scheme) and a 'Coastal Walk' designation.
- 6.1.7. The main policies and objectives are set out under chapters 2 (Core Strategy), 3 (Sustainable Placemaking and Quality Homes), 6 (Connectivity and Movement), 9 (Green Infrastructure and Natural Heritage) and 14 (Development Management).
- 6.1.8. The following sections are relevant to the proposed development:
- 2.2.11 – The Core Strategy (Table 2.14)
  - 2.7.2 – Role of Each Settlement (Self-Sustaining Town – Rush)
  - 3.5.3 – Core Strategy and Housing Growth
  - 3.5.11 – Quality of Residential Development
  - 3.5.13 – Compact Growth, Consolidation and Regeneration

- 3.5.15 – Housing in Rural Fingal
- 3.5.15.3 – Fingal Rural Settlement Strategy (Rural Generated Housing Need)
- 3.5.15.7 – Layout and Design for Housing in Rural Fingal
- 3.5.15.8 – South Shore Rush
- 14.6 – Design Criteria for Resi. Development (including Overlooking)
- 14.8 – Housing Development/Standards
- 14.9 – Residential Development – General Requirements
- 14.10 – Additional Accommodation in Existing Built-up Areas (including Infill)
- 14.12.2 – Design Criteria for Housing in the Countryside
- 14.12.3 – Design Guidelines for Rural Dwellings (Table 14.9)
- 14.12.11 – South Shore Rush
- 14.13 – Open Space

6.1.9. Summary of objectives within the ‘Site Specific Objective Boundary’:

LO13            Seeks to exclude multiple unit housing estates in the South Shore area.

LO14            Seeks to ensure that any new residential development in the South Shore area is in compliance with the specific housing policy.

6.1.10. Summary of other policies and objectives relevant to the appeal:

SPQHO1        Seeks to ensure that residential development helps create sustainable communities as per the Sustainable Residential Guidelines, as updated.

SPQHO34       Seeks to encourage higher densities whilst ensuring the protection of existing residential amenities and established character.

SPQHO38       Seeks to promote residential development at sustainable densities in accordance with the Core Strategy, particularly on under-utilised sites subject to architectural quality and integration with character etc.

SPQHO39       Requires new infill development to respect the height and massing of existing residential units whilst retaining the character of the area.

SPQHO42       Promotes development of underutilised infill sites in existing residential areas subject to the protection of area’s character and environment.

- SPQHO43 Seeks to promote the use of contemporary design solutions subject to design respecting the character and architectural heritage of the area.
- SPQHP46 Seeks to permit housing in the countryside only for those people who
- SPQHO84 Requires planning applications for rural houses to demonstrate compliance with layout and design criteria set out in Chapter 14 Development Management Standards.
- SPQHO92 Seeks to consider planning applications for a house located within the South Shore area of Rush from persons who have been resident there for a minimum of ten years or within the development boundary of Rush or within 1km by road of either of these areas, subject to sustainable planning and consideration of climate change impacts.

6.1.11. The following development management objectives are also of note:

- DMSO54 Financial Contribution in Lieu of Public Open Space (Smaller Schemes)

## 6.2. Regional Planning Policy

### *Regional Spatial and Economic Strategy (RSES)*

- 6.2.1. The Eastern and Midland Regional Spatial and Economic Strategy 2019-2031 (EMRA, 2019) sets the regional policy context. Regional Policy Objective (RPO) 4.80 requires local authorities manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. commuter catchment of Dublin, large towns and employment centres) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and settlements.

## 6.3. National Planning Policy and Guidelines

### *National Planning Framework (NPF)*

- 6.3.1. Project Ireland 2040, the National Planning Framework (NPF) (DHPLG, 2018), sets the national planning policy context. In rural areas under urban influence, National Policy Objective (NPO) 19 seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need

to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and settlements.

- 6.3.2. The NPF states that the core strategy of county development plans will account for the demand for single housing in the countryside and this will be related to the local authority's overall Housing Need Demand Assessment (HNDA). It also notes that quantifying the need for single housing on an evidence basis will assist in supporting the preparation of a comprehensive housing strategy and associated land use policies.

#### ***Updated Draft Revised NPF***

- 6.3.3. The updated draft revised NPF (November 2024) reiterates the importance of protecting the capacity of rural areas from over-spill development from urban areas.
- 6.3.4. Draft NPO 28 reflects the general policy approach under existing NPO 19. Similarly, draft NPO 7 reflects existing NPO 3a and seeks to deliver at least 40% of all new homes nationally, within the built-up footprint of existing settlements and ensure compact and sequential patterns of growth. In this regard, it states that built-up footprint shall be clearly defined for each settlement on the land-use zoning map as part of the statutory plan making process, a slight departure from existing advice.

#### ***Rural Housing Guidelines***

- 6.3.5. The *Sustainable Rural Housing Guidelines for Planning Authorities* (DEHLG, 2005) set out the key planning principles which should *inter alia* guide the assessment of planning applications for rural residential development. Section 3.2.3 details the general criteria for considering whether a person is an intrinsic part of a rural community. It notes that such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community e.g. farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas.

#### ***Flood Risk***

- 6.3.6. The *Planning System and Flood Risk Management, Guidelines for Planning Authorities* (DEHLG, November 2009)<sup>1</sup>, seek to avoid inappropriate development in

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<sup>1</sup> These guidelines were amended/clarified under Circular PL 2/2014.

areas at risk of flooding, and new development increasing flood risk elsewhere, whilst also avoiding unnecessary restriction of national, regional or local economic growth.

6.3.7. Figure 3.2 of the guidelines illustrates the sequential approach to managing flood risk.

6.3.8. Section 3.5 of the guidelines notes that highly vulnerable development, such as housing, in is inappropriate in Flood Zone B unless a Justification Test can be met.

#### 6.4. **Other National Policy and Guidance**

##### ***Climate Action Plan 2024***

6.4.1. The Climate Action and Low Carbon Development Act 2015, as amended, ('the Climate Act'), commits the State to a legally binding 51% reduction in overall GHG emissions by 2030 and to achieving net zero emissions by 2050. Section 15 places an obligation on the Board to make all decisions in a manner consistent with this Act.

6.4.2. The Climate Action Plan 2024 (DECC, 2024) follows the commitment in the Climate Act, and sets out the range of emissions reductions required for each sector to achieve the committed targets. Measures to reach a 50% reduction in transport emissions include a 20% reduction in total vehicle kilometres travelled relative to business-as-usual, a 50% reduction in fossil fuel usage and a 50% increase in daily active travel.

#### 6.5. **Natural Heritage Designations**

6.5.1. Closest designated sites:

- Rogerstown Estuary SAC and pNHA (000208) – c. 10m southwest
- Rogerstown Estuary SPA (004015) – c. 35m southwest

#### 6.6. **EIA Screening**

6.6.1. Having regard to the nature and scale of the proposed development, which is for four houses served with water and wastewater infrastructure, and its proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposal. The need for environmental impact assessment can, therefore, be excluded at preliminary examination stage and there is no requirement for a screening determination or EIA (see Appendix 1).

## 7.0 The Appeal

### 7.1. Grounds of Appeal

7.1.1. A first-party appeal has been lodged by CWPA Planning & Architecture on behalf of the applicant, Mrs. Anne McCrudden. The grounds of appeal can be summarized as:

#### *1<sup>st</sup> Refusal Reason*

- Submits that the proposal should not be assessed as a multi-unit development having regard to the MUD Act, 2011 i.e., less than 5 no. units, services will not be shared, and it will not include common areas nor a management company.
- Suggests, albeit erroneously, that the proposal does not materially contravene “Green Infrastructure Map-Based Objective 21”. I note the wording of “GIM21” in the previous Plan (2017-2023) reflects that of current Map Based Objective 13.
- Requests that the Board set aside this reason, albeit referring to “Reason no. 2”.

#### *2<sup>nd</sup> Refusal Reason*

- Submits that the proposal should not be assessed under objective SPQHO92 as the site is brownfield and previously used for commercial/horticultural purposes, albeit within a rural zoned setting.
- States that the site is surrounded by predominantly residential housing in a pattern that would be considered dense by rural standards, noting that the Development Plan refers to the area as becoming ‘increasingly residential’.
- Suggests that the proposal will provide for the regeneration of brownfield lands in accordance with the character of the street and surrounding area whilst making the most sustainable use of infrastructure in a consolidated residential area.
- Sets out paragraphs 8.2.7 and 8.2.8 of the Inspector’s report under ABP-305876-19 (see section 5.2.1 above) and notes that the appeal site, located c. 770m from that site, is within the same established pattern of residential development, with the remaining area characterised by smaller residential plots consisting of compact, detached properties, representative of an ‘increasingly residential’ area.

- Consider the proposed development represents an improvement of the underutilised site and submits that proposal should succeed in the context of Section 37(2)(b)(iii) and (iv), albeit referring to “reason no. 1”.

#### *3<sup>rd</sup> Refusal Reason*

- Refers to the NIS submitted with the appeal. This is addressed in Section 10 below.

#### *4<sup>th</sup> Refusal Reason*

- Submits that the layout has been designed to benefit from site orientation so as to maximise daylight and solar gain and to afford future residents with amenity views.
- Considers the proposal provides for a high-quality and distinctive design which will contribute to the appropriate and natural residential expansion of the area, thereby complying with Plan objectives SPQHO38 and SPQHO43.
- Suggests that there is a design precedent for balconies in the area i.e., a neighbouring property facing the sea front, a dwelling to the rear (PA ref. F17/0511), and a dwelling to the north, along Sprout Road.

#### *5<sup>th</sup> Refusal Reason*

- Refers to the engineering report appended to the appeal submission. It addresses the issues raised by the local authority’s road section and is summarised below.
- Notes the issues raised were framed in the context of further information request.
- In relation to Item 1, which can be summarised as discrepancies in the site layout drawings, it submits that the site layout (Dwg. No. 22075-PL-03) is now consistent with the engineering layout, suggesting this could have been conditioned.
- Regarding Item 2, which relates to an improved pedestrian crossing point, it notes that ramped sections will flank the section of roadway crossing the site entrance which will be constructed in concrete, suggesting this could have been conditioned.
- In relation to Item 3, regarding porous asphalt, it states that it will provide an additional layer of SuDS treatment on a roadway which is not intended to be taking in charge. However, indicates that they are amenable to a condition requiring the roadway to be constructed to the local authority taking in charge standards.

- Regarding Item 4, submits that street lighting will be provided as part of the proposed works and suggests that this could have been addressed by condition.
- Notes that the roads layout, car and bicycle parking provision, access, sightlines and road safety audit are all to the satisfaction of the road section.

## 7.2. **Planning Authority Response**

7.2.1. The planning authority's response can be summarised as follows:

- Remain of the opinion that the development as proposed would contravene materially both map-based objective 13 and objective SPQHO92 of the Development Plan with regard to residential development in South Shore Rush.
- States that access arrangements and amenity concerns remain pertinent.
- Reiterates that the planning authority could not conclude with certainty that no connectivity existed between the site and Rogerstown Estuary SAC and SPA based on the information submitted with the application. Thus, they were unable to determine whether the proposal alone or in combination with other plans or projects, would be likely to have significant effects on any European site, in view of best scientific knowledge and those sites conservation objectives.
- Provision should be made for a financial contribution if the appeal is successful.

## 7.3. **Observations**

None.

## 8.0 **Assessment**

8.1. There are two separate elements to my assessment: a planning assessment; and an appropriate assessment (AA). In each assessment, where necessary, I refer to the issues raised by parties in the submissions to the Board. There is some overlap between assessments, however, to avoid repetition I cross-reference where possible.

## 9.0 Planning Assessment

### 9.1. Preliminary Points

9.1.1. Having examined the application details and all other documentation on the appeal file, including the appeal submissions and observations, and inspected the site, and having regard to relevant local, regional and national policies and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal. The issues can be addressed under the following headings:

- Land Use and Development Principle
- Residential Amenity
- Traffic and Transport
- Other Issues

### 9.2. Land Use and Development Principle

#### *Background*

9.2.1. The proposed development relates to the provision of four detached houses on 'RU - Rural' zoned lands in the South Shore area of Rush, in north Co. Dublin. The planning authority's 1<sup>st</sup> and 2<sup>nd</sup> refusal reasons relate to material contravention of the Fingal Development Plan in respect of Map Based Objective 13 and 'multiple unit housing' schemes, and objective SPQHO92 and the Rural Settlement Strategy, respectively.

9.2.2. As the refusal reasons outline separate but similar concerns of material contravention, I will address these individually and then consider the land use and development principle in the context of the alleged material contravention of the Development Plan.

#### *Map Based Objective 13 and Multiple Unit Housing*

9.2.3. Planning permission is sought for the construction of four detached dwellings, laid out as a small infill housing development with single access point from the public road.

9.2.4. As noted, the 1<sup>st</sup> refusal reason relates to an alleged material contravention of Map Based Objective 13. This is indicated as a 'Local Objective Point' on the zoning map for Lusk and Rush (Sheet No. 6) and a 'Map Based Local Objective' in Appendix 8 and it seeks to exclude multiple unit housing estates in the South Shore area of Rush.

- 9.2.5. The Board should note that no issues arise from the different terminology employed.
- 9.2.6. The applicant has submitted that the proposal should not be assessed as a multi-unit estate having regard to the definition of “multi-unit development” set out in Section 1 of the Multi-Unit Development Act 2011 (‘the MUD Act’). In this regard, they suggest that there is no material contravention, albeit refer to “GIM21” of the previous Plan.
- 9.2.7. Section 1 of the MUD Act states:
- “multi-unit development” means a development being land on which there stands erected a building or buildings comprising a unit or units and that—*
- (a) as respects such units it is intended that amenities, facilities and services are to be shared, and*
- (b) subject to section 2(1), the development contains not less than 5 residential units.*
- 9.2.8. It is therefore important to note that Section 2(1) of the MUD Act states:
- Notwithstanding the definition of multi-unit development in section 1, the provisions of this Act specified in Schedule 1 shall apply to a multi-unit development comprising 2 or more residential units but less than 5 residential units.*
- 9.2.9. The MUD Act therefore also considers a two- to four-unit development as “multi-unit” and this reflects the clear and ordinary meaning of the term “multi-” i.e. more than one.
- 9.2.10. It is also important to note that Section 180 of the Planning Act relates to the taking in charge of housing estates where permission has been granted for the construction of two or more houses and the provision of new roads, open spaces, car parks, sewers.
- 9.2.11. In this regard, the development, if permitted, could be taken in charge by the local authority at the request of the developer or the future owners, following a plebiscite. I therefore reject the applicant’s supposition that the proposal will not share services as a conventional housing estate, it clearly would in respect of roads and water services.
- 9.2.12. I am therefore fully satisfied that the proposed development is a ‘multiple unit housing estate’ for which objective LO13 seeks to exclude in the South Shore area of Rush, and the proposal materially contravenes the Fingal Development Plan in this regard.
- Objective SPQHO92 and the Rural Settlement Strategy*
- 9.2.13. As noted, the 2<sup>nd</sup> refusal reason relates to an alleged material contravention of objective SPQHO92 and the Rural Settlement Strategy. Objective SPQHO92 governs

applications for houses within the South Shore area of Rush. It embodies the Rural Settlement Strategy insofar as it relates to this area of Rush and provides additional flexibility in terms of qualifying criteria as detailed in Section 3.5.15.8 and noted above.

9.2.14. The applicant submits that the proposal should not be assessed under objective SPQHO92 given that the site is developed and surrounded by housing. It is also suggested that the proposal would provide for the regeneration of the site and consolidation of the area, whilst utilising existing services. The applicant also refers to the Board decision under ABP-305876-19 as planning precedent and submits that the proposal should succeed under Section 37(2)(b)(iii) and (iv) of the Planning Act.

9.2.15. Therefore, on the one hand the applicant disputes the application of objective SPQHO92 insofar as it relates to the proposed development whilst on the other hand infers that the proposed development should be approved as a material contravention.

9.2.16. Planning permission is sought for four houses on rural zoned land where, as noted above, residential uses are 'permitted in principle' subject to compliance with the Rural Settlement Strategy. The applicant has failed to demonstrate compliance with the Rural Settlement Strategy generally, and objective SPQHO92 specifically. Whilst I accept that the appeal site is brownfield and currently operational for horticultural uses, as observed during my site inspection, there is no provision in the Rural Settlement Strategy or Plan which permits normal rural housing qualifying criteria to be set aside.

9.2.17. I am therefore fully satisfied that the proposed development, being an 'application for houses' for which Development Plan objective SPQHO92 and the Rural Settlement Strategy apply, materially contravenes the Development Plan provisions in this regard.

*Material Contravention of the Development Plan*

9.2.18. The Board should therefore note that it may only grant permission where it considers that one of the following circumstances of Section 37(2)(b) of the Planning Act apply:

- (i) the proposed development is of strategic or national importance,*
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*
- (iii) permission for the proposed development should be granted having regard to regional 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.*

9.2.19. The applicant submits that the proposal is permissible under criteria (iii) and (iv), however in the interest of completeness I will address each of the circumstances.

(i) Strategic or National Importance

9.2.20. The proposed development of four houses in a rural zoning is not considered to be of strategic or national importance notwithstanding the acknowledged shortage in housing supply at a national level. In this regard, the NPF highlights the importance of protecting the capacity of rural areas from over-spill development from urban areas.

9.2.21. The NPF also notes that the core strategy of county development plans will account for the demand for single housing in the countryside and this will be related to the local authority's overall Housing Need Demand Assessment (HNDA). Table 2.14 (Core Strategy) of the Fingal Development Plan outlines a projected housing demand of 16,425 units over the Plan period, of which 68 units are anticipated for the rural areas.

9.2.22. Whilst the proposal does represent 5.9% of the rural allocation, this is subject to compliance with the Rural Settlement Strategy for Fingal and is not to be confused with being of strategic or national importance, having particular regard to the viability of smaller towns and settlements in the county. Moreover, the proposal would not contribute significantly to the achievement of the overall Core Strategy for the county.

(ii) Conflicting Objectives

9.2.23. As noted, the appeal zoned is 'RU - Rural' where residential uses are 'permitted in principle' subject to compliance with the Rural Settlement Strategy. It is detailed in Section 3.5.15 of the Development Plan, with Section 3.5.15.8 relating specifically to the South Shore area of Rush. Whilst it states that the "pattern of development is increasingly residential", as alluded to by the applicant, it also notes the "overall rural residential character of the area". In this context, and having regard to the availability of water services infrastructure, it provides for a slightly more flexibility approach within

the area demarcated on the zoning map for Lusk and Rush (Sheet No. 6) i.e., within the 'Site Specific Objective Boundary' which is subject to Local Objective Point 13.

- 9.2.24. In this area it states that housing will be considered for persons who have been resident in the South Shore, or within the development boundary of Rush or within one kilometre by road of either of these areas for a minimum of ten years. Housing will also be considered for a mother, father, son or daughter of a resident who qualifies.
- 9.2.25. The inclusion of persons who would normally be considered representative of 'urban generated' housing demand (i.e. those from within the development boundary of Rush) in addition to certain relatives of a qualifying resident is manifestation of the flexibility of the Rural Settlement Strategy insofar as it applies to the South Shore area. It does not, however, extend to comprehensive infill development as implied by the applicant.
- 9.2.26. Whilst I note the provisions under Section 3.5.13 of the Development Plan in respect of compact growth, consolidation and regeneration, including objectives SPQHO38, SPQHO39, SPQHO42 as detailed above, they clearly reflect the national and regional policy approach to densification and regeneration of towns and villages in Fingal by making better use of under-used land and buildings within the built-up urban footprint.
- 9.2.27. The appeal site, whilst bound by housing, is clearly not within the built-up urban footprint. There are no conflicting objectives regarding the approach to housing in this area.

(iii) National and Regional Policy and Guidelines

- 9.2.28. The national and regional policy context is set out in sections 6.2 and 6.3 above. Section 3.5.15 of the Development Plan notes that rural Fingal can be classified as an area under 'Strong Urban Influence' due to its location in proximity to Dublin City, urban centres and important transport corridors. In this regard, NPO 19 and RPO 4.80 seek to manage rural housing on the core consideration of a demonstrable economic or social need to live there having regard to the viability of smaller towns and settlements.
- 9.2.29. Whilst I acknowledge the applicant's contention regarding the proposal's brownfield and infill credentials in the context of the 2<sup>nd</sup> refusal reason, these should not be conflated with the overarching requirement of demonstrating a rural housing need.
- 9.2.30. In this regard, I do not consider it reasonable to attach greater weight to NPO 3a, which seeks to deliver at least 40% of all new homes within the built-up footprint of existing

settlements, than to NPO 19, or similarly elevate RPO 3.2 above RPO 4.80, notwithstanding the explanation provided in the NPF in respect of 'built-up footprint'.

9.2.31. To do so, would, in my opinion, be disproportionate in the context of the appeal site, frustrate the achievement of the Core Strategy and set an undesirable precedent.

(iv) Pattern of Development in the Area and Permissions Granted

9.2.32. Again, in relation to the 2<sup>nd</sup> refusal reason, the applicant notes the permission granted by the Board in April 2020 under ABP-305876-19. Whilst that proposal could be considered analogous to the appeal before me, I also note that the Board refused a similar proposal for 4 houses in this rural zoning in July 2021 under ABP-309734-21. These sites are c. 0.75km and 0.45km northeast of the appeal site respectively, and both decisions were made in the context of the previous Development Plan 2017-23.

9.2.33. The relevant test is whether permission should be granted having regard to the pattern of development, and permissions granted, in the area "since the making of the development plan", that being the current Development Plan for 2023-29 which came into effect in April 2023. In that regard, the applicant has not presented any supporting evidence and I am not persuaded that proposed development meets this criteria.

Conclusion on Material Contravention

9.2.34. On this basis, I can find no compelling reason to set aside the planning authority's 1<sup>st</sup> refusal reason in relation to the provision of a multi-unit housing within an area restricted for such development or 2<sup>nd</sup> refusal reason in relation to compliance with the Rural Settlement Strategy generally and objective SPQHO92 specifically. Whilst I accept that the South Shore area of Rush does have a pattern and density of housing distinct from other rural areas of north county Dublin, the houses are generally ribboning along the road network as opposed to infill schemes typically found in built-up urban areas of towns and villages. To my mind the area retains sufficient rural characteristics and openness that make it distinct, or at least sufficiently distinguishable, from other parts of the South Shore area which are now suburbanised.

*Conclusion on Land Use and Development Principle*

9.2.35. Placing determining weight on the land use zoning objective, the site-specific objective boundary pertaining to the South Shore area of Rush, including Map Based Objective 13, the Rural Settlement Strategy and objective SPQHO92 relating to the provision of

housing at the appeal site, the proposal is unacceptable in principle and land use terms. I recommend the planning authority's decision should be upheld in this regard.

### 9.3. Residential Amenity

- 9.3.1. The planning authority's 4<sup>th</sup> refusal reason considers that the proposed scheme would seriously injure the amenities of property in the immediate area by way of overlooking.
- 9.3.2. The proposed houses are laid out in a relatively linear fashion, with Dwelling 2 located behind Dwelling 1 and Dwellings 3 and 4 located behind Dwelling 2. The houses are accessed via a short section of estate road which snakes around Dwelling 2 and terminates in a turning head serving Dwelling 3 and Dwelling 4. As the South Shore Road effectively bounds the curtilage of Dwelling 1, two of the four houses have road infrastructure adjoining the majority of the plot boundaries. This is far from optimal.
- 9.3.3. Each of the houses would have a FFL of 4.75mAOD and I note that a significant volume of fill material will be required to raise the existing ground levels from c. 2.70mAOD at the front, and c. 4.20mAOD at the rear of the appeal site. Whilst I note that the raising of the ground levels is required given the appeal sites vulnerability to flooding, and is therefore acceptable from a flood risk management perspective, it does elevate the site platform significantly and will exacerbate any overlooking issues.
- 9.3.4. In this regard, the applicant has not provided FFL's for the adjoining houses and very little can be ascertained from the contiguous elevation drawing, where the floor level of Dwelling 1 is obscured by the boundary wall and the drawing scale is inaccurate.
- 9.3.5. Regardless of this lack of detail, it is evident that the front of 'Riverside', to the southeast, will be overlooked by the first floor terrace of Dwelling 1, notwithstanding 1.80m high frosted glass along the side, and possibly from the living room below.
- 9.3.6. Similar views from the first floor terrace of Dwelling 2 persists and will give rise to some oblique views to the rear of the house to the west, albeit somewhat interrupted by the glasshouses to the rear of that house. Both Bedroom 1 and Bedroom 2, including the associated outdoor deck area of the latter, will have direct views overlooking the rear of 'Riverside', to the south, and some oblique views of the rear of the house itself.
- 9.3.7. There will also be a degree of overlooking from Dwelling 3 and Dwelling 4 into the private amenity areas of Dwelling 2, although at a closest distance of c. 15m this is

tolerable and I do not share the planning authority's concerns regarding the wraparound balconies. However, I do have unresolved concerns regarding the level of road infrastructure surrounding Dwelling 2. It is effectively islanded when considering the laneway that runs along the site boundary in addition to the estate road. Whilst the applicant submits that the layout has been designed to benefit from site orientation so as to maximise daylight and solar gain and to afford future residents with amenity views, I am not convinced that this should be at the expense of residential amenity.

- 9.3.8. The applicant has also suggested that the proposal provides for a high-quality design which will contribute to the appropriate and natural residential expansion of the area, thereby complying with objectives SPQHO38 and SPQHO43. For the reasons explored in section 9.2 above, the 'natural residential expansion of the area' is dependent on compliance with the Rural Settlement Strategy and therefore I do not agree that objective SPQHO38, relating to residential development at sustainable densities, is relevant. Whilst objective SPQHO43 does seek to promote contemporary and innovative design solutions, and the scheme is not without some contemporary and innovative merits, it does not respect the rural, estuarine character of the area.

#### *Conclusion on Residential Amenity*

- 9.3.9. On balance, having regard to the restricted nature of the site and scheme layout, including access arrangements, I consider that the proposed development, if permitted, would be overdevelopment, would result in substandard housing and overlooking, and would seriously injure the residential amenities of the area. I recommend the planning authority's 4<sup>th</sup> refusal reason should be upheld in this regard.

## **9.4. Traffic and Transport**

- 9.4.1. The planning authority's 5<sup>th</sup> and final refusal reason considers that insufficient information has been submitted to assess the transportation aspects of the proposal.
- 9.4.2. In this regard, I note the comments in the local authority's road section report which concludes by seeking further information in respect of several relatively benign issues. Whilst I agree with the tenor of the applicants response, which notes that the issues raised could have been addressed by planning condition, I fully understand the context within which the reason was attached, having regard to the guidance set out in Sections 6.8 and 7.14 of the Development Management Guidelines (DEHLG, 2007).

- 9.4.3. I have reviewed the applicants grounds of appeal in respect of the 5<sup>th</sup> refusal reason, as summarised above, and I am satisfied that there is now sufficient information to assess the transportation aspects of the proposal. Whilst my concerns regarding the impact of the estate road from a residential amenity perspective persist, I accept that the layout and design, including its junction with the South Shore Road and pedestrian crossing point, is acceptable from a traffic and public safety perspective.
- 9.4.4. My only residual concerns therefore relate to the applicants contention that the roadway is not intended to be taken in charge. Whilst I accept that this may be the applicant's current intention, it does not subvert the will of the future owners having regard to Section 180 of the Planning Act, as summarised above (section 9.2.10-11).
- 9.4.5. As a contingency the applicant submits that they are amenable to a condition requiring the roadway to be constructed to the local authority taking in charge standards. I recommend that such a condition be attached if the Board are minded to grant permission, however such a condition may have implications on the proposed surface water design, having regard to the contribution the porous asphalt makes to overall infiltration (see Section 4.5 of the engineering report). I therefore also recommend that a condition in respect of the attenuation and disposal of surface water, in addition to street lighting and road geometry conditions be applied in the event of a grant.

*Conclusion on Traffic and Transport*

- 9.4.6. On balance, I do not consider that four houses served by 8 no. car parking spaces would significantly increase traffic volumes in the area or endanger public safety by reason of a traffic hazard. I recommend that the applicants appeal should succeed in relation to the 5<sup>th</sup> refusal reason subject to the recommended planning conditions.

**9.5. Other Issues**

- 9.5.1. I note that the local authority's technical reports raised slight concerns in relation to landscape and open space, and demolition waste, and conditions were recommended.

*Landscape and Open Space*

- 9.5.2. The local authority's parks section report recommends that conditions relating to the submission of a landscape plan and separately the payment of a financial contribution, in lieu of a shortfall of 350sq.m of public open space, be attached to any permission.

- 9.5.3. Having regard to Development Plan objective DMSO54 and the evident lack of public open space within the scheme, save for some residual grassed areas along the estate road, I agree that the application of such a condition is reasonable. In similar regard, these residual grassed areas include a number of trees for which no detail has been provided and I note from the engineering report that bio-retention tree pits are to be utilised. I therefore agree that specific landscaping detail should be submitted and agreed with the planning authority to ensure that the proposed planting is suitable.
- 9.5.4. I recommend the Board attach such conditions in the event of a grant of permission.

#### *Waste Management*

- 9.5.5. The proposed development involves the demolition of two glasshouses and ancillary structure with a stated combined floor area of 2,472sq.m. The waste generated by such demolition works is considerable, however I accept that demolition waste will primarily consist of glass. In this regard, the local authority's waste section report considers that a Construction and Demolition Resource Waste Management Plan (RWMP) is required. I agree, and recommend that such a condition be attached should the Board be minded to grant permission for the proposed development.

#### *Conclusion on Other Issues*

- 9.5.1. On balance, I am satisfied that these residual landscaping and waste management issues can be addressed by planning condition. The above assessment represents my *de novo* consideration of all planning issues material to the proposed development.
- 9.5.2. Finally, noting the planning authority's submission regarding financial contributions, I agree that such a condition should be applied in the event of a grant of permission.

## **10.0 Appropriate Assessment**

### **10.1. Introduction**

- 10.1.1. The planning authority's 3<sup>rd</sup> refusal reason relates to appropriate assessment and considers that insufficient information was submitted to enable them to determine whether or not the proposed development would, either alone or in-combination with other plans or projects, in view of best scientific knowledge and in view of the sites' conservation objectives, be likely to have significant effects on any European site.

- 10.1.2. The planning application was accompanied by an ‘Appropriate Assessment – Natura Impact Statement Screening’ prepared by ESC Environmental (June 2023). Section 3 sets out the ‘screening assessment’ including an overview of the surface and foul water drainage proposals, and the ‘existing environment’, including proposed flood risk management measures, in addition to the Zone of Influence (Zol) and sites identified.
- 10.1.3. Having regard to the nature of the proposal, the nature of the receiving environment and the S-P-R model, the screening assessment considers a possible 16 no. European sites for inclusion within a Zone of Influence (Zol) i.e., 8 no. Special Areas of Conservation (SACs) and 8 no. Special Protection Areas (SPAs). These sites are estuarine and coastal in nature but also includes headlands and islands, some of which are insufficiently connected to the proposal to warrant further consideration.
- 10.1.4. Having further examined the likely spatial and temporal biophysical changes associated with the project impacts, the applicant’s screening determined that the following European sites are within the potential Zol of the project:
- Rogerstown Estuary SAC, and
  - Rogerstown Bay SPA.
- 10.1.5. In excluding the other identified sites, the report notes that all except Rogerstown Estuary SAC and SPA have no hydrological/geographical pathways or connections and are therefore beyond the Zol. It further states that all the Natura sites located within Dublin Bay are considered to have minimal possibility for impact due to the open marine water buffer. Due to this buffer, it states, any potential surface water discharge containing sediment, silt or pollutants will become diluted to non-discernible levels.
- 10.1.6. Section 4 of the report considers the potential for likely significant effects on the identified European sites, including any changes in water quality and resource. I specifically note that surface water discharge is to be treated by SuDS measures and foul water will be discharged to the local sewer and treated at Portrane WwTP.
- 10.1.7. The screening conclusion in Section 5 of the report states:
- “The location, scale and nature of the works is such that it will not directly or indirectly impact on any of the habitats or species of the Natura sites considered, nor will it contravene their conservation objectives, plans or targets.”*

- 10.1.8. As noted, the Planning Officer's Report outlines information gaps in the screening exercise, including erroneous references to "drainage reports" and "a truck wash" which did not form part of the application. It also notes references to "mitigation measures" and lack of methodology for dismantling and removing of the existing glasshouses, shed and storage tank, and bemoans a paucity of information in relation to excavations and soil removal. I consider the rationale for refusal reasonable on this basis and particularly given the proximity of the appeal site to the SAC and SPA. The report also notes the lack of consideration afforded to the North-west Irish Sea SPA.
- 10.1.9. As noted, in order to address the 3<sup>rd</sup> refusal reason, the applicant has submitted an NIS with the appeal. I note that revised notices were published/erected on 29<sup>th</sup> January 2024 in respect of the NIS in accordance with Section 142(4) of the Act and no observations were received by the Board within the 5-week submission period.
- 10.1.10. The NIS follows a broadly similar screening approach, albeit includes North-west Irish Sea SPA and excludes any erroneous references to 'drainage reports and truck washes'. The screening conclusion in Section 5 of the NIS states *inter alia*:
- "Due to the location of the works, there is a low potential for the site to directly impact the Rogerstown Estuary SAC and Rogerstown SPA. [...] As there is a low potential for impact, the screening needs to continue to the next phase and a Natura Impact Statement need to be carried out."*

## 10.2. Stage 1 (Screening)

10.2.1. Having reviewed the documents and submissions, I am satisfied that the information allows for a complete examination and identification of any potential significant effects of the proposed development, alone, or in combination with other plans and projects on any of the designated European sites. I have carried out a full screening determination for the development and it is attached to this report (Appendix 1). For completeness, the sites included in the screening exercise are as follows:

- Rogerstown Estuary SAC (000208) – c. 10 metres southwest
- Rockabill to Dalkey Island SAC (003000) – c. 3.4km east
- Malahide Estuary SAC (000205) – 3.9km south
- Lambay Island SAC (000204) – 6.2km east

- Rogerstown Estuary SPA (004015) – c. 35 metres southwest
- North-West Irish Sea cSPA (004236) – c. 2km east, southeast
- Malahide Estuary SPA (004025) – 4.6km south, southwest
- Skerries Islands SPA (004069) – 6.4km north, northeast
- Rockabill to Dalkey Island SPA (004014) – 7.1km north, northeast

### *Screening Determination*

10.2.2. In accordance with Section 177U of the Planning and Development Act 2000, as amended, and on the basis of objective information provided by the applicant, I conclude that the proposed development could result in significant effects on the Rogerstown Estuary SAC and the Rogerstown Estuary SPA in view of the conservation objectives of a number of qualifying interest features of those sites. It is therefore determined that Appropriate Assessment (Stage 2) [under Section 177V of the Planning Act] of the proposed development is required.

### 10.3. **Stage 2 (AA)**

10.3.1. Section 6 of the NIS describes the identified sites and includes their ‘habitat composition’ (Tables 5 and 7) and ‘threats and pressures’ (Tables 6 and 8). It does not, however, outline their QI’s or conservation objectives, including relevant attributes and targets. Whilst this deficiency is not fatal to the process, it is a deficiency nonetheless and, in this regard, I find the NIS to border on the perfunctory, at best.

10.3.2. Section 7 of the NIS identifies the potential impacts, namely the “deterioration of water quality in designated areas arising from the lateral movement of water from the site”.

10.3.3. The mitigation measures are set out in Section 8 of the NIS.

- Mitigation measures specific for surface water runoff (Section 8.1).
- Mitigation measures for the control of oil and fuel (Section 8.2).
- Storage mitigation measures (Section 8.3).
- Soil stripping and excavation works mitigation measures (Section 8.4).
- Concrete control and wheel washing mitigation measures (Section 8.5).

10.3.4. Section 9 of the NIS makes a finding of ‘no significant effects’.

10.3.5. Section 10 of the NIS concludes that:

*“...with enforced and fully implemented mitigation measures and with due regard and care for the natural heritage of the surrounding area, that the development and operation of the site at South Shore Road, Rush, Co Dublin will have no significant impacts (direct, indirect or cumulative) upon the Rogerstown Estuary SAC or SPA.”*

10.3.6. Appendix 3 summarises the information considered for the Appropriate Assessment and the site integrity test. This information has been compiled from the information contained in the NIS but leans heavily on the public information held by the NPWS, including but not limited to the conservation objectives listed on their website<sup>2</sup>.

*Appropriate Assessment Conclusion: Integrity Test*

10.3.7. In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on the Rogerstown Estuary SAC and Rogerstown Estuary SPA in view of the conservation objectives of those sites and that Appropriate Assessment under the provisions of S177U was required.

10.3.8. Following an examination, analysis and evaluation of the NIS all associated material submitted, and taking into account observations on nature conservation, I consider that adverse effects on site integrity of the Rogerstown Estuary SAC and Rogerstown Estuary SPA can be excluded in view of the conservation objectives of these sites and that no reasonable scientific doubt remains as to the absence of such effects.

10.3.9. This conclusion is based on:

- Detailed assessment of construction and operational impacts.
- Effectiveness of mitigation measures proposed including integration into a CEMP (by condition) ensuring smooth transition of obligations to eventual contractor.
- Application of planning conditions to ensure application of these measures.
- The proposed development will not affect the attainment of conservation objectives for the Rogerstown Estuary SAC and Rogerstown Estuary SPA.

10.3.10. I therefore conclude that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of any European sites,

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<sup>2</sup> NPWS. *Protected Sites in Ireland*. [Online] Available at <https://www.npws.ie/protected-sites> [accessed 28<sup>th</sup> March 25]

in view of those site's conservation objectives. No reasonable scientific doubt remains as to the absence of adverse effects on the integrity of these European sites.

- 10.3.11. In such circumstances, I also conclude that the applicants appeal should succeed in relation to the 3<sup>rd</sup> refusal reason. If the Board are minded to grant permission for the development, I recommend that the mitigation measures contained in the NIS be attached by condition to any subsequent order, in addition to a CEMP condition.

## 11.0 Recommendation

I recommend that permission be **refused** for the reasons and considerations below.

## 12.0 Reasons and Considerations

1. The proposed development of four dwellings on the subject site in the South Shore area of Rush would constitute a multiple unit housing estate in an area which is subject to Map Based Objective 13 of the Fingal Development Plan 2023-2029 and where multiple unit housing estates are explicitly excluded. The proposed development would therefore materially contravene Map Based Objective 13 of the Fingal Development Plan 2023-2029 and would, be contrary to the proper planning and sustainable development of the South Shore area.
2. Having regard to the location of the proposed development in the South Shore area of Rush, to the southwest of the town centre on 'RU - rural' zoned lands, and having regard to Objective SPQHO92 of the Development Plan relating to 'Applications for Houses within the South Shore Area', it is considered that the applicant has not demonstrated eligibility to be considered for dwellings within this rural area and the development would therefore materially contravene Objective SPQHO92 and the Rural Settlement Strategy of the Fingal Development Plan 2023-2029. To permit the proposed development on 'RU - rural' zoned lands where the principle of residential development is limited to set criteria and where residentially zoned land, appropriate to facilitate a multiple unit scheme is available in the wider area, it is considered that the development would be contrary to the national guidance under the National Planning Framework and contrary to the proper planning and sustainable development of the area.

3. Having regard to the limited area and linear nature of the scheme, and the access arrangements associated with the site and its relationship to the proposed houses generally, and Dwelling 2 specifically, it is considered that the proposed development, if permitted, would represent inappropriate overdevelopment of a restricted site, would result in substandard residential units and overlooking, and would seriously injure the amenities of adjoining residential property and future occupiers of the proposed houses. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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

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Philip Maguire

Senior Planning Inspector

31<sup>st</sup> March 2025

## Appendix 1 (EIA Screening)

### Form 1 – EIA Pre-Screening

<b>Case Reference</b>	ABP-318594-23		
<b>Proposed Development Summary</b>	Demolition of glasshouses, construction of 4 houses etc.		
<b>Development Address</b>	South Shore Road, Rogerstown, Rush, Co. Dublin		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<b>2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?</b>			
<b>Yes</b>	X	Class 10(b)(i) of Part 2 of Schedule 5 Class 10(b)(iv) of Part 2 of Schedule 5	Proceed to Q3.
<b>No</b>			No further action required
<b>3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?</b>			
<b>Yes</b>			EIA Mandatory EIAR required
<b>No</b>	X	Class 10(b)(i) 'more than 500 dwelling units' Class 10(b)(iv) 'urban development - 10ha etc.' <sup>3</sup>	Proceed to Q4
<b>4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?</b>			
<b>Yes</b>	X	500 dwelling unit threshold – 4 units proposed 10ha urban development threshold – 0.31ha site	Prelim. exam. required (Form 2)

<b>5. Has Schedule 7A information been submitted?</b>		
<b>No</b>		<b>Pre-screening determination conclusion remains as above (Q1 to Q4)</b>
<b>Yes</b>	X	<b>Screening Determination required</b>

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

Date: 31<sup>st</sup> March 2025

<sup>3</sup> In the context of the nature of the project as opposed to location – see Tom Ryan v ABP [2025] IEHC 111

## Form 2 – EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-318594-23
<b>Proposed Development Summary</b>	Demolition of glasshouses, construction of 4 houses etc.
<b>Development Address</b>	South Shore Road, Rogerstown, Rush, Co. Dublin
<p><b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector’s Report attached herewith.</b></p>	
<p><b>Characteristics of proposed development</b></p> <p>(In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).</p>	<p>The construction of 4 no. houses on serviced lands and adjacent to other residential and horticultural uses is not considered to be exceptional in the context of the existing environment.</p> <p>The development will involve demolition wastes in the form of glass, blocks and concrete in addition to excavated soils, boulder clay and rock.</p> <p>Construction activities will require the use of potentially harmful materials, such as fuels, concrete and other such substances and give rise to waste for disposal. Such wastes will be typical of construction sites.</p> <p>Noise and dust emissions during construction are likely. Such construction impacts would be localised and temporary in nature. Connection to Portrane WwTP is feasible and capacity is available. Significant wastes, emissions or pollutants are not anticipated.</p>
<p><b>Location of development</b></p> <p>(The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources,</p>	<p>There are ecologically sensitive locations in the immediate vicinity of the appeal site, namely Rogerstown Estuary. The nearest European sites are located at the estuary and c. 10m and 35m to the southwest – Rogerstown Estuary SAC and SPA.</p> <p>Rogerstown Estuary is also a proposed Natural Heritage Area (pNHA) and Ramsar</p>

<p>absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas, landscapes, sites of historic, cultural or archaeological significance).</p>	<p>site. The appeal site is hydrologically connected to these sites.</p> <p>The appeal site is previously developed brownfield land. Having regard to the scale of the proposal, intervening land uses and separation distance, the proposed SuDS measures and the mitigation measures outlined in the NIS, there is no potential to significantly impact on the ecological sensitivities of these European sites or other significant environmental sensitivities in the area.</p>	
<p><b>Types and characteristics of potential impacts</b></p> <p>(Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).</p>	<p>The appeal site has an area of c. 0.31ha and consists of glasshouses, a shed and water tank, with concrete hardstand to the front. It is bounded by walls and surrounded by detached houses and gardens, a road, a field, and other glasshouses and sheds/polytunnel. The construction of 4 no. houses is proposed. This is not considered exceptional in this context nor do significant cumulative effects arise. Likely effects are limited to the construction phase through increased noise and dust from construction traffic and operations. Implementation of a CEMP would mitigate potential impacts.</p>	
<b>Conclusion</b>		
<b>Likelihood of Significant Effects</b>	<b>Conclusion in respect of EIA</b>	<b>Yes or No</b>
There is no real likelihood of significant effects on the environment.	EIA is not required.	Yes
<del>There is significant and realistic doubt regarding the likelihood of significant effects on the environment.</del>	<del>Schedule 7A Information required to enable a Screening Determination to be carried out.</del>	No
<del>There is a real likelihood of significant effects on the environment.</del>	<del>EIAR required.</del>	No

**Inspector:**

**Date:** 31<sup>st</sup> March 2025

**DP/ADP:** \_\_\_\_\_

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

(only where Schedule 7A information or EIAR required)

## Appendix 2 (AA – Stage 1)

<b>Screening for Appropriate Assessment Test for likely significant effects</b>	
<b>Step 1: Description of the project and local site characteristics</b> <b>Case file: ABP-318594-23</b>	
<b>Brief description of project</b>	Normal Planning Appeal 4-unit housing development See section 3 of IR.
<b>Brief description of development site characteristics and potential impact mechanisms</b>	<p>The proposed development site is a brownfield site currently occupied by glasshouses, a shed and water tank, with concrete hardstand to the front. It is bounded by walls and surrounded by detached houses and gardens, a road, a field, and other glasshouses and sheds/polytunnel.</p> <p>The development will comprise of demolition of existing structures and the construction of 4 no. detached houses. Foul and surface water will discharge to the public network, albeit following attenuation in the case of the latter.</p> <p>Whilst there are no watercourses or other ecological features of note on the appeal site that would connect directly to European sites in the wider area, I note that surface water from the site currently discharges to the public storm network in the South Shore Road.</p> <p>An area of amenity grassland / open space bounds the southwestern side of the Shore Road South, albeit separated by a footpath and low wall. It is riparian to Rogerstown Estuary.</p>
<b>Screening report</b>	Yes Fingal County Council deemed the screening report to be insufficient in order to reach a screening determination (3 <sup>rd</sup> refusal reason)
<b>Natura Impact Statement</b>	Yes, submitted at appeal stage in order to address 3 <sup>rd</sup> refusal reason.
<b>Relevant Submissions</b>	None

## **Step 2: Identification of relevant European sites using S-P-R model**

The appeal site is not located in a European site. Having regard to the source-pathway-receptor (S-P-R) model, a summary of 9 no. European sites that occur within a possible Zone of Influence (Zoi) of the appeal site are outlined in the tables below, 7 no. of which have been excluded at preliminary screening. The excluded sites either have no pathway or hydrologically, the combination of distance, dilution and dispersal would have no significant impact on these sites. There are, however, surface water outfall and overland pathways to the Rogerstown Estuary SAC and Rogerstown Estuary SPA and these require further consideration in this assessment.

### *QI Habitats / Species*

No other habitats or species of relevance to any SAC's were recorded in the Natura Impact Statement. Having regard to the spatial scale of the potential project impacts and the distance to other SAC's, coupled with the fact that there are limited mobile conservation interests and unrealistic connectivity (physical or hydrological), I do not consider it appropriate to include any further SAC's beyond those in Table 1.

### *SCI Birds*

In general, SCI species have potential to occur in the environs of the proposed development given the foraging and migratory ranges. SCI bird species are susceptible to habitat loss, noise and human presence during the construction phase and susceptible to collision risk with buildings during the operational phase. That said, and having specific regard to the locational context, bird habitat impacts are unlikely. The appeal site is almost entirely covered by glasshouses and does not represent suitable foraging or roosting habitat for SCI bird species, particularly the waders and waterfowl associated with the SPA's on the eastern seaboard. The inclusion of any other SPA's beyond those in Table 2 is not, therefore, warranted.

I have therefore included those European sites with a possible ecological connection or pathway in this screening determination. These sites are considered in Tables 1 and 2 below. Those with identifiable ecological connections/continuity through the S-P-R model are considered further in terms of the likely impacts/significant effects.

European Site (Code)	Qualifying Interests / Special Conservation Interest / Link to conservation objectives (NPWS, accessed 28 <sup>th</sup> March 2025)  <i>*indicates a priority habitat under the Habitats Directive</i>	Distance / Direction	Ecological connections	Considered further in Screening
<b>Table 1 – Special Areas of Conservation (SAC's)</b>				
Rogerstown Estuary SAC (000208)	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritima</i> ) [1330] Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410] Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]* <a href="https://www.npws.ie/protected-sites/sac/000208">https://www.npws.ie/protected-sites/sac/000208</a>	10 metres – closest point to site boundary  Southwest	Yes – the engineering report states that the appeal site is drained via an existing surface water outlet and discharges onto the adjacent road surface. It is then captured by road gullies on the South Shore Road and conveyed seaward via the existing public surface water network. Outfall will persist during operation albeit with attenuation.  However, given the proximity, there is an additional indirect connection between the appeal site and this SAC via uncontrolled surface waters, particularly during heavy rainfall/flooding.  There is also potential for the spread of invasives given the proximity of the site.	Yes

<p>Rockabill to Dalkey Island SAC (003000)</p>	<p>Reefs [1170]  Harbour Porpoise (<i>Phocoena Phocoena</i>) [1351]  <a href="https://www.npws.ie/protected-sites/sac/003000">https://www.npws.ie/protected-sites/sac/003000</a></p>	<p>3.4km – closest point to site boundary  East</p>	<p>No – there is no direct connection between the appeal site and this SAC. Controlled and uncontrolled surface waters from the appeal site flow towards Rogerstown Estuary/Irish Sea and there is no indirect connection between it and this SAC via watercourses, drains, ditches etc.</p> <p>Whilst harbour porpoise is known to occur in estuarine waters, they are recorded in limited numbers within Rogerstown Estuary i.e., 3 no. occurrences on NBDC database across 4km grid (refs. O25F, O25G, O25K, O25L). Foraging areas are often associated with areas of strong tidal current (NPWS, 2024).</p> <p>The location, scale and duration of the project is such that it will not contribute to direct, indirect or in-combination impacts for which this SAC is designated.</p>	<p>No</p>
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<p>Malahide Estuary SAC (000205)</p>	<p>Mudflats and sandflats not covered by seawater at low tide [1140]  Salicornia and other annuals colonising mud and sand [1310]  Atlantic salt meadows (<i>Glaucopuccinellietalia maritima</i>) [1330]  Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]  Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]  Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]*  <a href="https://www.npws.ie/protected-sites/sac/000205">https://www.npws.ie/protected-sites/sac/000205</a></p>	<p>3.9km – closest point to site boundary  South</p>	<p>No – there is no direct connection between the appeal site and this SAC.  Controlled and uncontrolled surface waters from the appeal site flow towards Rogerstown Estuary/Irish Sea and there is no indirect connection between it and this SAC via watercourses, drains, ditches etc.  There is no mobile conservation interests associated with this SAC and no indirect impacts will arise.  The location, scale and duration of the project is such that it will not contribute to direct, indirect or in-combination impacts for which this SAC is designated.</p>	<p>No</p>
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<p>Lambay Island SAC (000204)</p>	<p>Reefs [1170]  Vegetated sea cliffs of the Atlantic and Baltic coasts [1230]  Phocoena phocoena (Harbour Porpoise) [1351]  Halichoerus grypus (Grey Seal) [1364]  Phoca vitulina (Harbour Seal) [1365]  <a href="https://www.npws.ie/protected-sites/sac/000204">https://www.npws.ie/protected-sites/sac/000204</a></p>	<p>6.2km – closest point to site boundary East</p>	<p>No – there is no direct connection between the appeal site and this SAC. Controlled and uncontrolled surface waters from the appeal site flow towards Rogerstown Estuary/Irish Sea and there is no indirect connection between it and this SAC via watercourses, drains, ditches etc.</p> <p>Whilst harbour porpoise is known to occur in estuarine waters, they are recorded in limited numbers within Rogerstown Estuary i.e., 3 no. occurrences on NBDC database across 4km grid (refs. O25F, O25G, O25K, O25L). Foraging areas are often associated with areas of strong tidal current (NPWS, 2024). No seals recorded across this grid.</p> <p>The location, scale and duration of the project is such that it will not contribute to direct, indirect or in-combination impacts for which this SAC is designated.</p>	<p>No</p>
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**Table 2 – Special Protection Areas (SPA's)**

<p>Rogerstown Estuary SPA (004015)</p>	<p>Greylag Goose (<i>Anser anser</i>) [A043]                  Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]                  Shelduck (<i>Tadorna tadorna</i>) [A048]                  Shoveler (<i>Anas clypeata</i>) [A056]                  Oystercatcher (<i>Haematopus ostralegus</i>) [A130]                  Ringed Plover (<i>Charadrius hiaticula</i>) [A137]                  Grey Plover (<i>Pluvialis squatarola</i>) [A141]                  Knot (<i>Calidris canutus</i>) [A143]                  Dunlin (<i>Calidris alpina</i>) [A149]                  Black-tailed Godwit (<i>Limosa limosa</i>) [A156]                  Redshank (<i>Tringa totanus</i>) [A162]                  Wetland and Waterbirds [A999]  <a href="https://www.npws.ie/protected-sites/spa/004015">https://www.npws.ie/protected-sites/spa/004015</a></p>	<p>35 metres – closest point to site boundary  Southwest</p>	<p>Yes – the engineering report states that the appeal site is drained via an existing surface water outlet and discharges onto the adjacent road surface. It is then captured by road gullies on the South Shore Road and conveyed seaward via the existing public surface water network. Outfall will persist during operation albeit with attenuation.</p> <p>However, given the proximity, there is an additional indirect connection between the appeal site and this SPA via uncontrolled surface waters, particularly during heavy rainfall/flooding.</p> <p>There is also potential for disturbance to SCI bird species given the proximity of the site.</p>	<p>Yes</p>
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<p>North-west Irish Sea SPA (004236)</p>	<p>Red-throated Diver (<i>Gavia stellata</i>) [A001] Great Northern Diver (<i>Gavia immer</i>) [A003] Fulmar (<i>Fulmarus glacialis</i>) [A009] Manx Shearwater (<i>Puffinus puffinus</i>) [A013] Cormorant (<i>Phalacrocorax carbo</i>) [A017] Shag (<i>Phalacrocorax aristotelis</i>) [A018] Common Scoter (<i>Melanitta nigra</i>) [A065] Little Gull (<i>Larus minutus</i>) [A177] Black-headed Gull (<i>Chroicocephalus ridibundus</i>) [A179] Common Gull (<i>Larus canus</i>) [A182] Lesser Black-backed Gull (<i>Larus fuscus</i>) [A183] Herring Gull (<i>Larus argentatus</i>) [A184] Great Black-backed Gull (<i>Larus marinus</i>) [A187] Kittiwake (<i>Rissa tridactyla</i>) [A188] Roseate Tern (<i>Sterna dougallii</i>) [A192] Common Tern (<i>Sterna hirundo</i>) [A193] Arctic Tern (<i>Sterna paradisaea</i>) [A194] Little Tern (<i>Sterna albifrons</i>) [A195] Guillemot (<i>Uria aalge</i>) [A199] Razorbill (<i>Alca torda</i>) [A200] Puffin (<i>Fratercula arctica</i>) [A204] <a href="https://www.npws.ie/protected-sites/spa/004236">https://www.npws.ie/protected-sites/spa/004236</a></p>	<p>2km – closest point to site boundary  East, southeast</p>	<p>No – there is no direct connection between the appeal site and this SPA.  There is an indirect connectivity between the project and this SPA via Rogerstown Estuary/Irish Sea, however the project is sufficiently remote that there is no risk of disturbance to waders and wildfowl using the SPA.  Whilst a number of waterbird species do feed in fields in the wider area, given the nature of the appeal site, which is entirely covered with glasshouses and concrete, the impacts on such species, such as displacement or disturbance from foraging or roosting is highly unlikely.  The location, scale and operation of the project is such that it will not contribute to direct, indirect or in-combination impacts on bird species for which the SPA is designated.</p>	<p>No</p>
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<p>Malahide Estuary SPA (004025)</p>	<p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]  Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]  Shelduck (<i>Tadorna tadorna</i>) [A048]  Pintail (<i>Anas acuta</i>) [A054]  Goldeneye (<i>Bucephala clangula</i>) [A067]  Red-breasted Merganser (<i>Mergus serrator</i>) [A069]  Oystercatcher (<i>Haematopus ostralegus</i>) [A130]  Golden Plover (<i>Pluvialis apricaria</i>) [A140]  Grey Plover (<i>Pluvialis squatarola</i>) [A141]  Knot (<i>Calidris canutus</i>) [A143]  Dunlin (<i>Calidris alpina</i>) [A149]  Black-tailed Godwit (<i>Limosa limosa</i>) [A156]  Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]  Redshank (<i>Tringa totanus</i>) [A162]  Wetland and Waterbirds [A999]  <a href="https://www.npws.ie/protected-sites/spa/004025">https://www.npws.ie/protected-sites/spa/004025</a></p>	<p>4.6km – closest point to site boundary   South, southeast</p>	<p>No – there is no direct connection between the appeal site and this SPA.   There is no indirect connectivity between the project and this SPA via watercourse, drains or ditches etc. The project is sufficiently remote that there is no risk of disturbance to waders and wildfowl using the SPA.   Whilst a number of waterbird species do feed in fields in the wider area, given the nature of the appeal site, which is entirely covered with glasshouses and concrete, the impacts on such species, such as displacement or disturbance from foraging or roosting is highly unlikely.   The location, scale and operation of the project is such that it will not contribute to direct, indirect or in-combination impacts on bird species for which the SPA is designated.</p>	<p>No</p>
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<p>Skerries Islands SPA (004122)</p>	<p>Cormorant (<i>Phalacrocorax carbo</i>) [A017]  Shag (<i>Phalacrocorax aristotelis</i>) [A018]  Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]  Purple Sandpiper (<i>Calidris maritima</i>) [A148]  Turnstone (<i>Arenaria interpres</i>) [A169]  Herring Gull (<i>Larus argentatus</i>) [A184]  <a href="https://www.npws.ie/protected-sites/spa/004122">https://www.npws.ie/protected-sites/spa/004122</a></p>	<p>6.4km – closest point to site boundary   North, northeast</p>	<p>No – there is no direct connection between the appeal site and this SPA.   There is no indirect connectivity between the project and this SPA via watercourse, drains or ditches etc. The project is sufficiently remote that there is no risk of disturbance to waders and wildfowl using the SPA.   Whilst a number of waterbird species do feed in fields in the wider area, given the nature of the appeal site, which is entirely covered with glasshouses and concrete, the impacts on such species, such as displacement or disturbance from foraging or roosting is highly unlikely.   The location, scale and operation of the project is such that it will not contribute to direct, indirect or in-combination impacts on bird species for which the SPA is designated.</p>	<p>No</p>
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<p>Rockabill SPA (004014)</p>	<p>Cormorant (<i>Phalacrocorax carbo</i>) [A017]  Herring Gull (<i>Larus argentatus</i>) [A184]  Kittiwake (<i>Rissa tridactyla</i>) [A188]  Guillemot (<i>Uria aalge</i>) [A199]  Razorbill (<i>Alca torda</i>) [A200]  <a href="https://www.npws.ie/protected-sites/spa/004117">https://www.npws.ie/protected-sites/spa/004117</a></p>	<p>7.1km – closest point to site boundary   North, northeast</p>	<p>No – there is no direct connection between the appeal site and this SPA.   There is no indirect connectivity between the project and this SPA via watercourse, drains or ditches etc. The project is sufficiently remote that there is no risk of disturbance to waders and wildfowl using the SPA.   Whilst a number of waterbird species do feed in fields in the wider area, given the nature of the appeal site, which is entirely covered with glasshouses and concrete, the impacts on such species, such as displacement or disturbance from foraging or roosting is highly unlikely.   The location, scale and operation of the project is such that it will not contribute to direct, indirect or in-combination impacts on bird species for which the SPA is designated.</p>	<p>No</p>
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**Step 3: Described the likely effects of the project on European sites**

The proposed development will not result in any direct effects on either the SAC or SPA as it relates to Rogerstown Estuary. However, due to the size and scale and proximity of the proposed development to the Estuary, impacts generated by the construction and operation of the housing development require consideration.

Sources of impact and likely significant effects are detailed in the Table below.

**Screening matrix**

Site Name	Possibility of significant effects (alone) in view of the conservation objectives of the site	
	Impacts	Effects
Rogerstown Estuary SAC [000208]	Indirect pathway to SAC:  Release of silt and sediment during site works.  Release of construction related compounds including hydrocarbons to surface waters.  Spread of invasive plant species such as Giant Hogweed and Japanese Knotweed, particularly given the significant volume of fill material required to raise the existing ground levels out of the flood zones.  Increased human disturbance at this site, particularly during the construction phase (including demolition).	Potential damage to riparian and estuarine habitats associated with inadvertent spillages of hydrocarbons and/or other chemicals during construction phase.  Potential damage to the marine and coastal habitats and freshwater qualifying interest species dependent on water quality, an impact of sufficient magnitude could undermine the sites conservation objectives.  Potential spread of invasive species associated with ground disturbance activities during the construction phase.
	Likelihood of significant effects from proposed development (alone): <b>Yes</b>	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects?	

	<b>Impacts</b>	<b>Effects</b>
Rogerstown Estuary SPA [004015]	As above.	Disturbance during construction.  A decline in water quality would undermine the conservation objectives set for water quality targets and to prey availability.
	Likelihood of significant effects from proposed development (alone): <b>Yes</b>	
	If No, is there likelihood of significant effects occurring in combination with other plans or projects?	

**Step 4: Conclude if the proposed development could result in likely significant effects on a European site**

Based on the information provided in the AA screening (as detailed in the NIS), my site visit and review of the conservation objectives and supporting documents, I consider that in the absence of mitigation measures beyond best practice construction methods, the proposed development has the potential to result significant effects on the Rogerstown Estuary SAC and Rogerstown Estuary SPA.

I concur with the applicants' findings that such impacts could be significant in terms of the stated conservation objectives of the SAC and SPA when considered on their own and in combination with other projects and plans in relation to pollution related pressures and disturbance on qualifying interest habitats and species.

**Screening Determination**

**Finding of likely significant effects**

In accordance with Section 177U of the Planning and Development Act 2000, as amended, and on the basis of objective information provided by the applicant, I conclude that the proposed development could result in significant effects on the Rogerstown Estuary SAC and the Rogerstown Estuary SPA in view of the conservation objectives of a number of qualifying interest features of those sites. It is therefore determined that Appropriate Assessment (Stage 2) [under Section 177V of the Planning Act] of the proposed development is required. Measures intended to reduce/avoid significant effects have not been considered in the screening process.

## Appendix 3 (AA – Stage 2)

### Appropriate Assessment

The requirements of Article 6(3) as related to Appropriate Assessment of a project under part XAB, sections 177V [or S 177AE] of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Taking account of the preceding screening determination, the following is an Appropriate Assessment of the implications of the proposed housing development in view of the relevant conservation objectives of the **Rogerstown Estuary SAC and the Rogerstown Estuary SPA** based on scientific information provided by the applicant and considering expert opinion through observations on nature conservation.

The information relied upon includes the following:

- Engineering Assessment Report (Waterman Moylan, September 2023)
- Flood Risk Assessment (Waterman Moylan, September 2023)
- Appropriate Assessment – NIS Screening (ESC Environmental Ltd, June 2023) as amended by Further Information submitted with the planning appeal including Natura Impact Statement (ESC Environmental Ltd, November 2023)

I am satisfied that the information provided is adequate to allow for Appropriate Assessment. All aspects of the project which could result in significant effects are considered and assessed in the NIS and mitigation measures designed to avoid or reduce any adverse effects on site integrity are included and assessed for effectiveness.

### Submissions/observations

Biodiversity Officer – none

Department of Housing, Heritage and Local Government (DAU) – none

Uisce Éireann – no objection subject to condition (connection agreements etc.)

Public observations – none (application or appeal stage)

In accordance with Section 131 of the Planning Act, the Board invited comment from An Taisce, DAU and The Heritage Council – none received.

## European sites

Rogerstown Estuary SAC (Site Code 000208):			
Summary of Key issues that could give rise to adverse effects (from screening stage):			
(i) Water quality degradation (construction and operation) (ii) Spread of invasive species			
Qualifying Interest features likely to be affected	Conservation Objectives Targets and attributes (as relevant – summary)	Potential adverse effects	Mitigation measures (summary)
Estuaries [1130]	<p>Maintain favourable conservation condition</p> <p>Community structure [<i>Zostera</i> (eelgrasses) and <i>Mytilus edulis</i> (common mussel) density] – conserve the high quality of the respectively dominated communities.</p> <p>Community distribution – conserve the following community types in a natural condition: Sand to coarse sediment with <i>Nephtys cirrosa</i> (white catworm) and <i>Scolelepis squamata</i> (bristleworm) community complex; Estuarine sandy mud to mixed sediment with <i>Tubificoides benedii</i> (sludge-worm), <i>Hediste</i></p>	<p>Applies to all Conservation Objectives listed opposite:</p> <p>Water quality degradation and/or alteration of habitat (from release of silt and sediment during site works and release of construction related compounds including hydrocarbons to surface waters) would undermine conservation objectives.</p> <p>Spread of invasive non-native species, particularly those found in riparian zones, including but not limited to Japanese Knotweed and Giant Hogweed, during the importation of construction fill giving rise to water</p>	<p>Mitigation measures are detailed in Section 8 of the NIS and include:</p> <ul style="list-style-type: none"> <li>• Pollution control measures,</li> <li>• Application of industry standard controls, and</li> <li>• Supervision by a Site Ecologist.</li> </ul>

	<i>diversicolor</i> (ragworm) and <i>Peringia ulvae</i> (Laver spire shell) community complex.	stagnation and competition with community structure and distribution, and physical structure, and vegetation structure and composition.	
Mudflats and sandflats not covered by seawater at low tide [1140]	Maintain favourable conservation condition  As above regarding community structure and distribution.		
Salicornia and other annuals colonising mud and sand [1310]	Maintain the favourable conservation condition  Physical structure [sediment supply] – maintain, or where necessary restore, natural circulation of sediments and organic matter, without any physical obstructions.  Vegetation structure [zonation, height, cover] – maintain the range of coastal habitats including transitional zones, subject to natural processes including erosion and succession; maintain structural variation within sward; and maintain more than 90% of area outside creeks vegetated.  Vegetation structure [negative indicator species – common cordgrass] – no		

	significant expansion or new sites for this species and an annual spread of less than 1% where it is already known to occur.		
Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritimae</i> ) [1330]	Restore favourable conservation condition As above regarding physical and vegetation structure.		
Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410]	Restore favourable conservation condition As above regarding physical and vegetation structure.		
Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]	Restore favourable conservation condition  Physical structure [functionality and sediment supply] – maintain the natural circulation of sediment and organic matter, without any physical obstructions.  Vegetation structure [zonation] – maintain the range of coastal habitats including transitional zones, subject to natural processes including erosion and succession.  Vegetation composition [plant health of dune grasses, negative indicator species] – 95% of marram grass ( <i>Ammophila</i>		

	<p><i>arenaria</i>) and/or lyme-grass (<i>Leymus arenarius</i>) should be healthy; negative indicator species (including non-natives) to represent less than 5% cover.</p>		
<p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p>	<p>Restore favourable conservation condition</p> <p>Physical structure [functionality and sediment supply] – maintain the natural circulation of sediment and organic matter, without any physical obstructions.</p> <p>Vegetation structure [zonation, bare ground, sward height] – maintain the range of coastal habitats including transitional zones, subject to natural processes including erosion and succession; bare ground should not exceed 10% of fixed dune habitat, subject to natural processes; maintain structural variation within sward.</p> <p>Vegetation composition [negative indicator species (including <i>Hippophae rhamnoides</i>), scrub/trees] – negative indicator species (including non-natives) to represent less than 5% cover; no more than 5% cover or under control.</p>		

**Assessment of issues that could give rise to adverse effects:**

**(i) Water quality degradation**

Water quality of the SAC remains 'at risk' (i.e., 'poor' Transitional Waterbody WFD status for 2016-2021, albeit an improvement from 'bad' for the 2013-2018 monitoring period). Good quality water is necessary to maintain these Annex I marine and coastal habitats. Water quality degradation is the main risk from unmanaged site works where silt laden surface water reaches Rogerstown Estuary. Decrease in water quality would compromise conservation objectives for these Annex I habitats and increase sedimentation could alter habitat quality for spawning or nursery grounds. No operational phase impacts are anticipated.

**Mitigation measures and conditions**

The focus of mitigation measures proposed are at preventing ingress of pollutants and silt into surface water and receiving drains. This is to be achieved via design (avoidance), supervision by a Site Ecologist and application of specific mitigation measures. Detail is provided on sediment control, concrete and hydrocarbon control, an emergency response plan and general biosecurity measures. Measures include:

- Removal of uncured concrete waste / cementitious material from the site.
- Excavation spoil to be minimal and backfilled away from the estuary and its banks or taken off-site.
- Fuelling etc. to be carried out under controlled conditions in bunded areas away from watercourse or drains.
- Immediate containment of fuel spillages etc. and removal of contaminated soil from site. Oil soak pads to be kept on site.
- Release of suspended solids to be controlled by interception (silt trap) and management of site runoff. Water will be released to grassed areas of low gradient, if required, to allow for percolation to ground. Location and specification of the settlement areas to be agreed with a site ecologist.
- Storage of mobile bowsers etc. in a secure, impermeable storage area, at least 50m away from drains/open water
- Storage of fuel containers within a secondary containment system.
- Storage areas located at least 50m from drains and Rogerstown Estuary on an impermeable base and covered.

- Containers to be stored upright and clearly labelled.
- Implementation of drainage and associated pollution control measures in advance of the main construction activities.
- Soil stripping and excavation works will take account of predicated weather (24-hour advanced forecast - Met Éireann) and suspended during periods of prolonged rainfall.
- Earthworks will be compacted in layers to prevent water ingress and degradation of material.
- Contaminated soils and subsoils, if detected, will be segregated, stockpiled and sampled etc. and disposed of in an approved treatment or disposal facility.
- To reduce the volume of cementitious water, only concrete chutes will be washed down on site at a designated polythene lined bunded area – washout of trucks will occur off site.
- No disposal of concrete remnants will be permitted elsewhere on site.
- Installation of a wheel wash near the site entrance and exit with regular cleaning of same.

I am satisfied that the preventative measures which are aimed at interrupting the source-pathway-receptor are targeted at the key threats to protected marine and coastal habitats and by arresting these pathways or reducing possible effects to a non-significant level, adverse effects can be prevented. I recommend that these measures are integrated into a CEMP by way of condition in the event of a grant of permission.

**(ii) Spread of invasive species**

Spread of invasive non-native species such as Giant Hogweed and Japanese Knotweed would undermine conservation objectives for habitat 2120 Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes) and habitat 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes), both of which are identified down estuary of the proposed development, with the latter being a priority habitat.

**Mitigation measures and conditions**

The focus of mitigation measures proposed are to ensure effective storage and control of materials, particularly earthworks. This is to be achieved via design (avoidance) and application of specific mitigation measures. Detail is provided general biosecurity measures. Measures include:

- Storage areas located at least 50m from drains and Rogerstown Estuary on an impermeable base and covered.
- Storage away from moving plant, machinery and vehicles.
- Contaminated soils and subsoils, if detected, will be segregated, stockpiled and sampled etc. and disposed of in an approved treatment or disposal facility.

I am satisfied that the measures proposed can be implemented, supervised effectively and will be effective in preventing the spread of invasive species.

I recommend that these measures are integrated into a CEMP by way of condition in the event of a grant of permission.

#### **In-combination effects**

I am satisfied that in-combination effects have been assessed adequately in the NIS (Section 4.4). I am satisfied that the applicant has demonstrated that no significant residual effects will remain post the application of mitigation measures.

#### **Findings and conclusions**

The applicant determined that following the implementation of mitigation measures the construction and operation of the proposed development alone, or in combination with other plans and projects, will not adversely affect the integrity of this European site.

Based on the information provided, I am satisfied that adverse effects arising from the proposed development can be excluded for the Rogerstown Estuary SAC. No direct impacts are predicted. Indirect impacts would be temporary in nature and mitigation measures are described to prevent ingress of silt laden surface water and other construction related pollutants. I am satisfied that the mitigation measures proposed to prevent such effects have been assessed as effective and can be implemented and conditioned if permission is granted.

#### **Reasonable scientific doubt**

I am satisfied that no reasonable scientific doubt remains as to the absence of adverse effects.

#### **Site Integrity**

The proposed development will not affect the attainment Conservation objectives of the Rogerstown Estuary SAC. Adverse effects on site integrity can be excluded and no reasonable scientific doubt remains as to the absence of such effects.

**Rogerstown Estuary SPA (Site Code 004015):**

**Summary of Key issues that could give rise to adverse effects (from screening stage):**

**(i) Water quality degradation (construction and operation) (ii) Disturbance**

Qualifying Interest features likely to be affected	Conservation Objectives Targets and attributes (as relevant -summary)	Potential adverse effects	Mitigation measures (summary)
Greylag Goose (Anser anser) [A043]	<p>Applies to all QI's listed opposite:</p> <p>To maintain the favourable conservation condition</p> <p>Distribution – no significant decrease in the range, timing or intensity of use of areas by the listed bird species, other than that occurring from natural patterns of variation.</p>	<p>Decrease in water quality.</p> <p>Disturbance from foraging areas during construction.</p>	<p>Mitigation measures are detailed in Section 8 of the NIS and include:</p> <ul style="list-style-type: none"> <li>• Pollution control measures,</li> <li>• Application of industry standard controls, and</li> <li>• Supervision by a Site Ecologist.</li> </ul>
Light-bellied Brent Goose (Branta bernicla hrota) [A046]			
Shelduck (Tadorna tadorna) [A048]			
Shoveler (Anas clypeata) [A056]			
Oystercatcher (Haematopus ostralegus) [A130]			
Ringed Plover (Charadrius hiaticula) [A137]			

Grey Plover ( <i>Pluvialis squatarola</i> ) [A141]			
Knot ( <i>Calidris canutus</i> ) [A143]			
Dunlin ( <i>Calidris alpina</i> ) [A149]			
Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156]			
Redshank ( <i>Tringa totanus</i> ) [A162]			
Wetland and Waterbirds [A999]			

**Assessment of issues that could give rise to adverse effects:**

**(i) Water quality degradation**

As above for SAC. Maintenance of good water quality is required to maintain favourable conservation condition for waterbirds and wetlands.

**Mitigation measures and conditions**

As above.

**(ii) Disturbance**

There may be some temporary disturbance during the daytime during the construction period from increased human presence and where works involve significant noise impacts, however, the proposed development will not result in any temporary or permanent barriers to movement within the estuary.

**Mitigation measures and conditions**

Area of amenity grassland / open space between the appeal site and estuary will ensure that disturbance effects from site activity will be minimal, coupled with standard construction noise and vibration control measures. I recommend CEMP by way of condition in the event of a grant of permission.

**In-combination effects**

I am satisfied that in-combination effects have been assessed adequately in the NIS (Section 4.4). I am satisfied that the applicant has demonstrated that no significant residual effects will remain post the application of mitigation measures.

**Findings and conclusions**

The applicant determined that following the implementation of mitigation measures the construction and operation of the proposed development alone, or in combination with other plans and projects, will not adversely affect the integrity of this European site.

Based on the information provided, I am satisfied that adverse effects arising from the proposed development can be excluded for the **Rogerstown Estuary SPA**. No direct impacts are predicted. Indirect impacts would be temporary in nature and mitigation measures are described to prevent ingress of silt laden surface water and other construction related pollutants. I am satisfied that the mitigation measures proposed to prevent such effects have been assessed as effective and can be implemented and conditioned if permission is granted.

**Reasonable scientific doubt**

I am satisfied that no reasonable scientific doubt remains as to the absence of adverse effects.

**Site Integrity**

The proposed development will not affect the attainment Conservation Objectives of the **Rogerstown Estuary SPA**. Adverse effects on site integrity can be excluded and no reasonable scientific doubt remains as to the absence of such effects.

**Appropriate Assessment Conclusion: Integrity Test**

In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on the Rogerstown Estuary SAC and Rogerstown Estuary SPA in view of the conservation objectives of those sites and that Appropriate Assessment under the provisions of S177U was required.

Following an examination, analysis and evaluation of the NIS all associated material submitted, and taking into account observations on nature conservation, I consider that adverse effects on site integrity of the Rogerstown Estuary SAC and Rogerstown Estuary SPA can be excluded in view of the conservation objectives of these sites and that no reasonable scientific doubt remains as to the absence of such effects.

My conclusion is based on the following:

- Detailed assessment of construction and operational impacts.
- Effectiveness of mitigation measures proposed including integration into a CEMP (by condition) ensuring smooth transition of obligations to eventual contractor.
- Application of planning conditions to ensure application of these measures.
- The proposed development will not affect the attainment of conservation objectives for the Rogerstown Estuary SAC and Rogerstown Estuary SPA.

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