



An  
Bord  
Pleanála

## Inspector's Report ABP-318980-24

<b>Development</b>	Construction of 4 dwellings comprising 2 detached 2 storey houses and 2 semi detached 2 storey houses and associated site works.
<b>Location</b>	Rear of No. 121 Lower Main Street, Rush, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F23A/0567
<b>Applicant(s)</b>	Derek and Geraldine Jones
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Barry Drumm
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	11 <sup>th</sup> April 2024
<b>Inspector</b>	Emma Nevin



## **1.0 Site Location and Description**

- 1.1. The appeal site is situated in a coastal location in the settlement of Rush, approximately 200m southwest of Rush Harbour and approximately 4km east of Rush and Lusk Train Station. The site comprises part of the rear garden area of No.121 Lower Main Street, a two-storey detached and extended dwelling that fronts directly onto Lower Main Street to the north. The site is rectangular in shape, relatively flat. It is bounded to the east, west and south by concrete block walls while a row of hedging separates the appeal site from the remainder of No.121 and its curtilage. The site has a stated area of 0.11ha.
- 1.2. The surrounding area is residential in character with the residential developments of Tayleurs Point to the west and Knockbawn to the south. Development to the east of the site comprises lower density residential of detached / semi-detached dwellings on large plots.
- 1.3. The appeal site is accessed directly via a gated entrance off Tayleurs Point to the west. No.121 is also served by pedestrian access off Lower Main Street and a vehicular access via a right of way to the east.

## **2.0 Proposed Development**

- 2.1. The proposed development encompasses the construction of 4no. dwelling units comprising 2 no. detached two-storey houses (Units 1 and 2) and 2 no. semi-detached houses (Units 3 and 4).
- 2.2. The units will comprise 3no. two bed and 1no four bed units, with a stated gross floor area of 385sqm. Each unit is to be served by an area of private open space in the form rear gardens ranging in size from 70.8 sqm (unit 3) to 135.7 sqm (unit 2).  
  
The proposed dwellings will have gable roof profile with overall heights ranging from 7.5 metres to 8.1 metres.
- 2.3. The site is to be served via an existing gated entrance off Tayleurs Point the neighbouring residential development to the west, which itself is accessed from Tower Street, to the south. It is proposed to reduce the overall width of the proposed entrance from 5 metres to 3.1 metres (increased to 3.1 metres by way of further information request).

- 2.4. A total of 7 no. car parking spaces are proposed within permeable 'parking square / shared surface' area.
- 2.5. Table 1 below provides a schedule of the key figures associated with the proposed development:

<b>Table 1 - Site / Development Details</b>	
Site Area	0.11 ha
Gross Floor Area	385 sq. m.
No. of proposed units	4
Car Parking	7 spaces
Public Open Space	0 sq. m.

- 2.7. Table 2 below provides a breakdown of the residential unit types proposed:

<b>Table 2 – Residential Unit Type</b>			
<b>House No.</b>	<b>House Type</b>	<b>Unit Size</b>	<b>Private Amenity Space</b>
Dwelling 1	2 bed – detached	85 sq. m.	115 sq. m.
Dwelling 2	4 bed – detached	140 sq. m.	135.7 sq. m.
Dwelling 3	2 bed – semi-detached	80 sq. m.	70.8 sq. m.
Dwelling 4	2 bed – semi-detached	80 sq. m.	77.8 sq. m.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority granted permission, following significant further information request, on 10<sup>th</sup> January 2024, subject to 24 conditions, which included the following:
- Condition 4 requires that all dwellings be used as single residential units and shall not be used for short term letting.

- Condition 5 relates to naming and numbers proposals.
- Condition 7 requests that all bathroom/ensuite windows contain obscure glazing.
- Condition 9 relates to the provision of proposed for electric vehicle parking.
- Condition 10 relates to taking in charge for the development.
- Condition 18 relates to Part V agreements.
- Condition 22 relates to the occupation of the dwellings by individual purchasers.
- Condition 23 relates to a Bond in respect of the completion of services for roads, open spaces, car parks and drains.
- Condition 24 relates to a financial contribution in lieu of open space provision towards the cost of amenity works in the area of the proposed development.

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

- 3.2.1. Planning Reports dated 9<sup>th</sup> January 2024 and 14<sup>th</sup> November 2023 have been provided.
- 3.2.2. This planning application was assessed under the Fingal County Development Plan, 2023 – 2029.
- 3.2.3. The original planning report considered it necessary to seek further information on the following items:
  - To submit details of the surface water drainage proposed for the shared parking area.
  - To demonstrate the provision of EV charging facilities in line with the requirements of Section 14.17.10 of the Development Plan.
  - To submit revised plans of a proposed vehicular access width of not less than 3.1 metres.
- 3.2.4. The second planning report considered the further information response to be acceptable and addressed any outstanding concerns raised.

It was considered that the further information did not result in a significant alteration to the original proposal, and as such, revised newspaper and site notices were not required in this instance.

3.2.5. The planners report concluded that the development is in accordance with the Louth County Development Plan 2021 – 2027, subject to 24 no. conditions.

3.2.6. Other Technical Reports:

The planning report indicates that the following were consulted during the assessment of the planning application:

- Waer Services: Following the submission of the further information report received indicating no objection subject to conditions.
- Transport: Following the submission of the further information report received indicating no objection subject to conditions.
- Parks and Green Infrastructure: Report received indicating no objection subject to conditions.
- Environment Department: No report received.
- Environmental Health: No report received.
- Biodiversity: No report received.

### **3.3. Prescribed Bodies**

3.3.1. The Planning Authority report indicated that the following prescribed bodies were consulted.

- Uisce Eireann: Report received indicating no objection subject to conditions.

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

3.4.1. Ten third party submissions were received, the issues raised within which can be summarised as follows:

- Development would result in addressing impacts on the main issue including overshadowing, overlooking, loss of privacy, loss of life and give rise to overbearance.

- Concerns raised in relationship the design and development of the scheme resulting in loss of amenity and impacts on loss of views.
- Construction/ construction traffic would be disruptive to existing residents and no traffic management plan has been put in place.
- Limited parking provision and increase in traffic movements.
- Increase in general disturbance including noise and traffic emissions, giving rise to impacts on public health.
- Significant community investment has occurred in the area.
- Development would impact children at play within the estate and give rise to safety concerns and traffic hazard.
- Proposed access through the existing cul-de-sac is inappropriate and would increase vehicular movements on a quiet, narrow street. Alternative access should be considered.
- Access should be provided through the applicant's own land via No. 121 Lower Main Street. Pre-planning meeting took place, however no report prepared by qualified transportation and engineer is evident and therefore the opinion arrived at is invalid.
- Insufficient community liaison has taken place regarding the development.
- Over development and lack of public open space.
- Compliance with previous conditions of An Bord Pleanála not demonstrated.

3.4.2. Following the submission of further information, two further third-party observations were received, the issues raised within which can be summarised as follows:

- Concerns in relation to the proposed gateway access.
- Construction impacts and construction traffic and parking.
- Decrease the value of property in Tayleurs Point as it removed sea views.
- There is a separate entrance at No. 121 Lower Main Street, which could be used as an alternative to the proposed access.

## 4.0 Planning History

- 4.1.1. ABP-311648-21/Reg: Ref: F21A/0074 - Outline permission for 4 no. dwellings was granted on appeal to An Bord Pleanála (ABP-311648-21) on 10<sup>th</sup> February 2023, subject to 11 no. conditions.
- 4.1.2. F20A/0317 – Planning permission was refused by Fingal County Council on 27<sup>th</sup> August 2020 for a development consisting of for a bungalow and associated site works, using existing pedestrian and vehicular entrance off Tayleurs Point Housing Development.

The reasons for refusal included:

*“1. It is condiered that the proposed development by reason of its location within a larger parcel of ‘TC’ zoned lands, woudl be contrary to Objective PM44 of the Finfal Develompent Plan 2017 – 2023 which supports comprehensive re-development of backland sites. The inefficeint unse of these ‘TC’ zoned lands would constitute an undesirable precedent for similar haphazard piecemeal development within the immediate area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of area.*

*2. It is considered that the applicant has not adequately demonstarted that the proposed development can be constructed without giving rise to conflict between pedestrian and vehicular traffic movements and the proposed development would endanger public safety by reason of traffic hazard”.*

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. Under the Fingal County Development Plan 2023 – 2029, the site is zoned “TC - Town Centre’, with a stated objective “*to protect and enhance the special physical and social character of town and district centres and provide and/or improve urban facilities*”.
- 5.1.2. Relevant Sections/Policy and Objectives:  
  
Chapter 9 – Green Infrastructure and Natural Heritage:



- Objective GINHO76 – Development and Risk of Coastal Erosion.

#### Chapter 14 – Development Management Standards:

- Table 14.4: Infill Development
- Objective DMSO1 – Screening for Appropriate Assessment
- Objective DMSO2 – Screening for Environmental Impact Assessment
- Section 14.6 Design Criteria for Residential Development in Fingal
- Objective DMSO19 – New Residential Development
- Objective DMSO20 – Schedule of Accommodation
- Objective DMSO21 – Floor Plans for Residential Development
- Section 14.8 – Housing Development/Standards
- Section 14.8.1 – Floor Areas
- Section 14.8.2 – Separation Distances
- Objective DMSO26 – Separation Distance between Side Walls of Units
- Section 14.8.3 – Private Open Space
- Objective DMSO27 – Minimum Private Open Space
- Objective DMSO31 – Infill Development
- Objective DMSO54 – Financial Contribution in Lieu of Open Space Provision in Smaller Developments

## 5.2. National Planning Framework (NPF)

- 5.2.1. The National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018 supports compact growth, and seeks to make better use of existing underutilised, serviced lands within built-up areas. The framework targets a greater proportion (40%) of future housing development to be within and close to the existing ‘footprint’ of built-up areas.
- 5.2.2. Specific reference is had to National Policy Objective 35, which states that  
 “Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights”.

### 5.3. **Section 28 Ministerial Guidelines**

5.3.1. Having considered the nature of the proposal and the documentation on file, I am of the opinion that the directly relevant S28 Ministerial Guidelines and other related guidance are:

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024).
  - Appendix B: Measuring Residential Density.
  - Appendix D: Design Checklist Key Indicators of Quality Urban Design and Placemaking.
- Design Manual for Urban Roads and Streets (2013),
- Development Management Guidelines (2007),
- Housing for All – A New Housing Plan for Ireland to 2030 (2021); and
- BRE Guidance ‘Site Layout Planning for Daylight and Sunlight’: A Guide to Good Practice (2022).

### 5.4. **Natural Heritage Designations**

5.4.1. The subject site is not located within a designated European Site. However, the closest such sites are:

- Rogerstown Estuary SPA (Site code 00415) located approximately 600m to the southwest.
- Rogerstown Estuary SAC (Site code 00208) and pNHA are located approximately 700m to the southwest.
- Rockabill to Dalkey Island SAC (Site Code 0030000) is located approximately 900m to the east.

### 5.5. **EIA Screening**

5.5.1. I refer the Board to Appendix 1 – Form 1 EIA Pre-Screening and Form 2 EIA Preliminary Examination of this report.

- 5.5.2. Having regard to the nature and scale of the proposed development comprising an infill residential development of only 4no. units and the location of the site outside of any protected site, the nature of the receiving environment, the availability of public services, and the separation distance from the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

- 6.1.1. A third party appeal has been received, from Mr. Barry Drumm, Tayleurs Point, the grounds of appeal are summarised below:
- The assessment of Fingal County Council regarding roads matters are not accepted and An Bord Pleanála is requested to assess proposals.
  - The proposal will cause construction and operational phase traffic impacts on the existing use and safety cul-de-sac and An Bord Pleanála is requested to assess in relation to parking, obstruction, etc.
  - The applicant has not liaised with adjoining landowners to ensure a comprehensive development approach.
  - Adverse residential on the area of the cul-de-sac and communal space and the construction phase would render this space unusable.
  - Adverse residential and visual amenity impacts on adjoining properties.
  - Overdevelopment concerns, the design of the scheme and the lack of adequate communal public open space.
  - The previous reasons for refusal under Ref. Ref. F20A/0317, which referred to a proposed bungalow, still apply to the site.
  - The proposal in contrary to the Fingal County Development Plan, 2023 – 2029, specifically the ‘TC’ zoning of the site, Green Infrastructure as the site offers no public green area is proposed and fails to comply with Section 14.6

‘Design Criteria for Residential Development, Objective DMSOI 9, ‘New Residential Development’, and Objective DMSO31, ‘Infill Development’.

- The proposed development, if granted would set a poor precedence.
- A fair balance of amenity impacts is not proposed between the applicant and the impacted clients, the proposal will have no impact on the existing applicants, however, adjoining dwellings will suffer immense adverse disruption, traffic, and quality of life impacts.
- The proposal would depreciate the value of the appellants property and the property was purchased based on being located within or adjoining a quiet lane/cul-de-sac.
- The appeal document includes 10 no. reasons for refusal for the proposed development.

## **6.2. Applicant Response**

6.2.1. A first party response to the appeal was received dated 22<sup>nd</sup> February 2024. The submission responds to the issues raised within the third party appeals as follows: -

- It is noted that BPS claim to represent a number of clients in the appeal, however only one acknowledgement of receipt of submission was provided to the applicant. It is assumed that Mr. Drumm is the sole objector.
- There is an urgent need for these houses, to accommodate family members.
- Outline planning permission was granted for this development.
- It is submitted that the substantive planning issues have already been decided and the case being put to appeal is to delay and frustrate the planning permission and planning process, contrary to Clause 145 (1) (b) of the Planning and Development Act, 2000, as amended and should be dismissed.
- The appeals are on spurious grounds and have already been considered unreasonable or not relevant to the proper planning and sustainable development of the area.
- The alternative access suggested is nonsensical and made with the intent of diverting the attention away from the previously granted permission.

- Construction traffic was previously addressed in outline permission granted. The cul-de-sac has been used for construction traffic in the past.
- The appellant has totally misunderstood the design philosophy of the cul-de-sac shared surface. The design intent has been understood as part of the previous planning decision in providing safe vehicular and pedestrian access to the proposed development.
- In relation to the lack of liaison with the residents in the area, the land owners to the east were contacted, as requested by the Council. Agreement regarding the proper development of the lands is the remit of the Local Planning Authority.
- In relation to Construction Management and Construction Traffic Management, Condition 8 of F23A/0567 addresses these issues.

### **6.3. Planning Authority Response**

6.3.1. A response was received from the planning authority dated 5<sup>th</sup> March 2024. The submission responds to the third-party appeal as follows:

- It is considered that the impacts on transport, as well as the visual and residential amenity impacts associated with this proposed development have been considered and set out within the Chief Executive's Order.
- The Planning Authority is satisfied that the proposed, subject to the conditions, is consistent with the policies and objectives of the Fingal Development Plan 2023 – 2029.
- The Planning Authority has no further comment to make.

6.3.2. The planning authority conclude that An Bord Pleanála are requested to uphold the decision of the Planning Authority, and requests that conditions requiring financial contributions and/or Bonds in accordance with Section 48 Development Contribution Scheme are included.

### **6.4. Observations**

None received.

## 6.5. Further Responses

None received.

## 7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal, I consider the main issues which arise in relation to this appeal are as follows:

- I. Compliance with Development Plan
- II. Impact on residential and visual amenity
- III. Access – Including Construction Impacts
- IV. Previous application on site
- V. Overdevelopment
- VI. Precedent and Devaluation of Property
- VII. Lack of consultation with adjoining landowners
- VIII. Appropriate Assessment, and
- IX. Other Matters.

## 7.2. Compliance with Development Plan

- 7.2.1. The appellant submits that the proposed development is contrary to the zoning objective for the site, including Chapter 9 of the Development Plan and Chapter 14, in relation to the ad-hoc and piecemeal development, specifically given the lack of a comprehensive and agreed Development Plan for the area and fails the criterion in Section 14.6, Objective DMSOI 9, and Objective DMSO31, and Objective DMSO54, to by-pass public open space requirements.
- 7.2.2. The applicable Development Plan for development in the area is the Fingal County Development Plan, 2023 – 2029. Under the Development Plan, the site is zoned town and district centre, with a vision to develop and consolidate these centres with an appropriate mix of commercial, recreational, cultural, leisure and residential uses, and to enhance and develop the urban fabric of these centres in accordance with the principles of urban design, conservation and sustainable development. Accordingly,

residential development is permitted in principle under this zoning objective and therefore, I consider the principle of the proposed development to be acceptable.

7.2.3. In relation to backland development, I reference Section 3.5.13 of the Development Plan which highlights that the Council seeks to promote the regeneration of the towns and villages in Fingal, by making better use of under-used land within the existing built footprint which can be achieved through the subdivision of large gardens to accommodate infill development and backland development opportunities. I also note Objective SPQHO42, which encourages and promotes the development of backland sites in existing residential areas (subject to the character of the area and environment being protected).

7.2.4. The appellant references non-compliance with a number of sections and objectives within the Development Plan as follows:

Section 14.6 relates to Design Criteria for Residential Development, for new housing specifically residential infill. Having regard to the specific requirements as outlined in the Development Plan, I consider that the design and layout, the mix of units, and the residential density as proposed would be acceptable and in accordance with the Development Plan requirements in this regard.

Objective DMSO 19, requires applications for residential developments comply with all design and floor area requirements set out in Section 28 Ministerial Guidelines. Having regard to the design, size (floor areas) and layout of the dwellings as proposed, I consider that the proposals are in accordance with relevant Section 28 Ministerial Guidelines.

Objective DMSO31 relates to infill development specially that the new development shall respect the height and massing of existing residential units. I consider that the height, mass and building line of the dwellings as proposed mirrors that of the adjoining development in Tayleurs Point. Similarly, the existing boundary wall to the site will be retained, thereby the proposal retains the physical character of the area as stated in the policy objective.

7.2.5. The appellant also expresses concerns in relation to the lack of public open space to serve the proposed development, and submits that the applicant should not be allowed to rely on Objective DMSO54, in respect of a financial contribution in lieu of open space provision. I note that the Council has the discretion to accept a financial

contribution in lieu of the remaining open space requirement as per the aforementioned policy objective.

- 7.2.6. Having regard to the quantum of private open space proposed to serve each of the proposed dwellings i.e. ranging from 71 sq. m. – 135.7 sq. m. and having regard to the location of the subject site, relative to the town centre and Rush Harbour, the park and associated playground, I consider that the relaxation on the requirement of communal open space and request for a contribution under Section 48 in relation to open space, for this development proposal, to be acceptable.

### **7.3. Impact on residential and visual amenity**

- 7.3.1. The appellant expresses several concerns regarding overshadowing, overlooking, loss of privacy, loss of light and overbearance on adjoining sites.
- 7.3.2. In terms of overshadowing, while no shadow survey was undertaken by the applicants, having carried out a site visit, reviewed the planning application drawings and documentation and noting the scale, height, and location of the proposed development, I do not consider that the proposed development would contribute to significant overshadowing of the adjoining properties to the north, south and west of the site.
- 7.3.3. In terms of overlooking, I note the design of the proposed development in particular the proposed eastern and western elevation, which comprise of opaque glazing at both first and ground floor levels (units 1 and 2), this design prevents overlooking to the adjacent properties. To the northern and southern elevations i.e. the rear elevations of the proposed dwellings, any fenestration at first floor level are considered to be at a sufficient separation distance and orientation with adjoining residential dwellings and as such, I consider that overlooking issues to the north or south do not arise.
- 7.3.4. With respect to visual impact, while not raised as a specific issue within the appeal, the proposed development will be located to the rear of the existing site at No. 121, the proposed building maintains the building line of the adjoining dwellings to the west, at Tayleurs Point. The proposed dwellings will have varying heights of 7.5 – 8.1 metres, which is considered to be consistent with the height of the adjoining dwellings to the west. I note that the proposed dwelling units 1 and 2 have a lower ridge height to that of the adjoining at Tayleurs Point (i.e. Nos 104 and 103). I also



consider that the proposed dwellings have a simple contemporary design, with high quality materials and finishes and will assimilate successfully into the streetscape at this location.

7.3.5. While the proposed dwellings will be visible from the adjoining sites, I do not consider that the development would result in a visually overbearing form of development given the proposed form and layout and would be an attractive infill development to the rear of this site.

7.3.6. Therefore, I am satisfied that the proposed development will improve the public realm by allowing the creation of an attractive high-quality residential scheme built upon an underutilised backland site, thus improving the amenity of the adjoining area.

#### **7.4. Access – including Construction Impacts**

7.4.1. The appeals highlight concerns with respect of the proposed entrance to the site and the use of the cul-de-sac by existing residents. Suggestions are made in relation to the use of the existing access to the site from Main Street. At time of site inspection, I noted that No.121 Lower Main Street is served by a second vehicular entrance to the east of the site. This entrance is located outside and to the north of the appeal site and is accessed via an established right of way from Harbour Road. Given the nature, location and proximity of this entrance to adjoining properties, I do not consider that this would provide for a more suitable alternative access arrangement to that currently proposed.

7.4.2. Whilst I acknowledge that the construction of an additional four dwellings, as proposed, would result in an increase in traffic movements on the cul-de-sac and throughout the wider Tayleurs Point development, I am satisfied, having inspected the site and surrounding area, that the internal road network serving Tayleurs Point is adequate, in terms of width, alignment and pedestrian facilities (footpaths, etc.), to cater for the likely additional traffic movements generated as a result of the proposed development. The proposal includes 7 parking spaces to serve the proposed dwellings, which I consider to be sufficient to cater for the proposed development (i.e. 3 two-bed and 1 four-bed dwellings).

7.4.3. The proposed development would result in an extension of the existing cul-de-sac roadway and the provision of shared parking/hard standing area to the western

boundary of the site. I consider that this additional space would cater for any additional parking demand generated by the proposed development. This area would also provide an additional space for the turning of vehicles etc. Therefore, I do consider that the proposed development would result in additional traffic congestion, the demand for additional parking or the unsafe movement of vehicles within the existing cul-de-sac and would be acceptable.

- 7.4.4. Condition No. 10 of the Planning Authority grant of permission included that the proposed vehicular entrance to the development shall measure 3.1 metres in width between the kerbs and no gate to be installed at the development, from a safety perspective I consider that the inclusion of this condition to be warranted. I am satisfied that details pertaining to the entrance to the site and parking can be appropriately dealt with prior to construction by way of condition should the Board be inclined to grant planning permission in this instance.

#### Construction Impacts

- 7.4.5. Potential impacts on residential amenities during construction, relating to dust, noise, and construction traffic during the construction period, as well as potential damage/disruption to neighbouring properties and the communal use of the cul-de-sac during construction are raised by the appellant. Given the nature, scale, and location of the proposed development, I am satisfied that matters pertaining to construction management can be appropriately dealt with prior to construction by way of condition should the Board be inclined to grant planning permission in this instance and requesting the Applicant to prepare/submit a Construction Management Plan.

#### **7.5. Previous application on site**

- 7.5.1. It is submitted in the appeal that the previous reasons for refusal still stand in relation to the previous application on site (Ref. Ref. F20A/0317). I note that the previous application was for a single dwelling and was assessed under the previous County Development Plan. As such, the Policy Objective quoted in reason for refusal 1 of Ref. Ref. F20A/0317, i.e. Objective PM44 has been superseded by Objective SPQHO42 – Development of Underutilised Infill, Corner and Backland Sites of the Fingal County Development Plan 2023-2029, which as noted in the foregoing assessment encourages and promotes the development of backland sites.

- 7.5.2. In relation to the access, which formed part of the second reason for refusal, I consider that the proposed vehicular access arrangements have been adequately assessed by the Planning Authority during the course of the planning application and as included in the foregoing assessment.
- 7.5.3. Therefore, I do not consider that the previous reasons for refusal, for a different development proposal on this site are relevant to the instant assessment for the provision of 4 dwellings.
- 7.5.4. While this appeal pertains to a permission for development, I would also draw the Boards attention to the outline permission granted for 4 no. dwellings on this site under ABP-311648-21/Reg: Ref: F21A/0074, subject to 11 no. conditions (noted in Section 4 above).

## **7.6. Overdevelopment**

- 7.6.1. The appeal expresses concerns in respect to overdevelopment of the site. The proposed scheme comprises planning permission for 4no. residential units on a 0.11ha site, this would equate to a net density of 36units per hectare. While this may be considered relatively low for new development on town centre zoned lands, I consider that the density of development proposed is acceptable, in this instance, having regard to the small scale and infill nature of the subject site and the prevailing pattern and density of development in the area which comprises mainly low-to medium density conventional housing. Overall, I am satisfied that the proposed development would not represent overdevelopment and would be an acceptable use of zoned and serviced backlands and as such is consistent with the Development Plan.

## **7.7. Precedent and Devaluation of Property**

- 7.7.1. The appellant expressed concerns that the proposal would set an undesirable precedent for similar ad-hoc and piecemeal, backland developments, which would adversely impact on adjoining residential amenity.
- 7.7.2. While this is noted, all appeal cases are assessed and determined on their own merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development. Nothing the foregoing assessment, I consider the

proposal development to be consistent with other residential development in the vicinity, i.e. adjoining a residential development.

- 7.7.3. I also note the concerns raised in the grounds of appeal in respect of the devaluation of neighbouring property. However, having regard to the assessment and conclusions set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent that would adversely affect the value of property in the vicinity.

#### **7.8. Lack of consultation with adjoining landowners**

- 7.8.1. Whilst concern is expressed in the appeal as to the lack of liaison with those impacted by the proposed development, I note that there is no legal imperative for the applicant to engage in discussions prior to lodgement of an application. It is clear that local residents were aware of the application and engaged in the process by making their views known through written submissions to the Planning Authority in the first instance and to An Bord Pleanála at this appeal stage.

#### **7.9. Appropriate Assessment**

- 7.9.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment and the distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

#### **7.10. Other Matters**

##### Part V

In relation to Part V agreements, I note that the applicant submitted a Certificate of Exemption from the provisions of Part V, Section 96 of the Planning and Development Act, 2000, as amended as part of the planning application.

##### Public Lighting

No details have been provided in relation to public lighting, however I am satisfied that details pertaining to public lighting can be appropriately dealt with prior to construction by way of condition should the Board be inclined to grant planning permission in this instance.

Section 145 (1) (b) of the Planning and Development Act, 2000, as amended.

I note the applicants' request, in their response to the appeal submission, that the Board should under 145 (1) (b) of the Planning and Development Act, 2000, as amended should dismiss the appeal.

Section 145 (1) (b) of the Planning and Development Act, 2000, as amended refers to a case where the decision of the planning authority in relation to an appeal or referral is confirmed or varied, if the Board in determining the appeal or referral does not accede in substance to the grounds of appeal or referral or if the Board considers that the appeal or referral was made with the intention of delaying the development or securing a monetary gain by a third party, the Board, if it so thinks proper, may direct the appellant or person making the referral to pay.

Having regard to the nature of the appeal and submissions and to the recommendation to grant permission, I conclude that it is not appropriate that the Board evoke Section 145 (1) (b) of the Planning and Development Act, 2000, as amended, in this instance.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission be granted, subject to conditions as set out below, for the following reasons and considerations.

## **9.0 Reasons and Considerations**

Having regard to the 'town centre' zoning which applies to the site under the Fingal County Development Plan 2023 - 2029, under which residential development is stated to be generally acceptable in principle, subject to the conditions set out below the proposed development would be an appropriate form of backland development in terms of scale, form and layout, would not seriously injure the residential and visual amenities of the adjoining residential estate and would be acceptable in terms of parking provision, traffic movements and pedestrian safety. The proposed development complies with the Development Plan and accords with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by additional information submitted on 5<sup>th</sup> December 2023, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed vehicular access shall measure 3.1 metres in width between kerbs, and no gate shall be installed at the entrance to the proposed development.</p> <p>Reason: In the interest of vehicular and pedestrian safety.</p>
3.	<p>The parking areas serving the residential units shall be provided with functional electric vehicle charging points, and all of the in-curtilage car parking spaces serving residential units shall be provided with electric connections to the exterior of the houses to allow for the provision of future electric vehicle charging points. Details of how it is proposed to comply with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: in the interest of sustainable transportation.</p>
4.	<p>All windows to the side gable elevations of the proposed dwellings shall be fitted and permanently maintained with obscure glass.</p> <p>Reason: In the interest of residential amenity.</p>
5.	<p>Details of the materials, colours, and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p>

	Reason: In the interest of visual amenity.
6.	<p>That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble, or other debris on adjoining roads during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p>
7.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone, and public lighting cables) shall be run underground within the site. In this regard, ducting in accordance with the requirements of the planning authority shall be provided to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interests of orderly development and the visual amenities of the area.</p>
8.	<p>Public lighting shall be provided in accordance with a public lighting scheme which shall be submitted to and agreed in writing with the planning authority prior to commencement of the development.</p> <p>Reason: In the interests of amenity and public safety.</p>
9.	<p>Proposals for a naming and numbering scheme for the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate signs, and house numbers, shall be provided in accordance with the agreed scheme. The proposed name shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority.</p> <p>Reason: In the interest of urban legibility and to ensure the use of locally appropriate place names for new residential areas.</p>
10.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays.</p>

	<p>Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
11.	<p>The developer shall enter into water and wastewater connection agreements with Uisce Eireann, prior to commencement of this development.</p> <p>Reason: In the interest of public health and orderly development.</p>
12.	<p>Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services, details of which shall be agreed in writing prior to the commencement of development.</p> <p>Reason: In the interest of proper site drainage.</p>
13.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
14.	<p>During the construction phase the proposed development shall comply with British Standard 5228 Noise Control on Construction and open sites Part 1, Code of practice for basic information and procedures for noise control.</p> <p>Reason: In order to safeguard the residential amenities of property in the vicinity.</p>
15.	<p>(a) The landscaping scheme prepared by Gannon and Associates as submitted to the planning authority, shall be carried out within the first</p>



	<p>planting season following substantial completion of external construction works.</p> <p>(b) All planting shall be adequately protected from damage until established. Any plants which die, are removed or become seriously damaged or diseased, within a period of three years from the completion of the development [or until the development is taken in charge by the local authority, whichever is the sooner], shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.</p> <p>Reason: In the interest of residential and visual amenity.</p>
16.	<p>A plan containing details for the management of waste (and, in particular, recyclable materials) within the development, including the provision of facilities for the storage, separation and collection of the waste and, in particular, recyclable materials and for the ongoing operation of these facilities shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, the waste shall be managed in accordance with the agreed plan.</p> <p>Reason: To provide for the appropriate management of waste and, in particular recyclable materials, in the interest of protecting the environment.</p>
17.	<p>Prior to commencement of development, the developer or other person with an interest in the land to which the application relates shall enter into an agreement in writing with the planning authority in relation to the provision of housing in accordance with the requirements of section 94(4) and section 96(2) and (3) (Part V) of the Planning and Development Act 2000, as amended unless an exemption certificate shall have been applied for and been granted under section 97 of the Act.</p> <p>Reason: To comply with the requirements of Part V of the Planning and Development Act 2000, as amended, and of the housing strategy in the development plan of the area.</p>

18.	<p>The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>
19.	<p>Prior to commencement of development, the developer shall lodge with the planning authority a cash deposit, a bond of an insurance company, or other security to secure the provision and satisfactory completion of roads, footpaths, watermains, drains, open space and other services required in connection with the development, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development. The form and amount of the security shall be as agreed between the planning authority and the developer or, in default of agreement, shall be referred to An Bord Pleanála for determination.</p> <p>Reason: To ensure the satisfactory completion of the development.</p>

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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Emma Nevin  
Planning Inspector

19<sup>th</sup> April 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	318980-24			
<b>Proposed Development Summary</b>	Construction of 4 dwellings comprising 2 detached 2 storey houses and 2 semi detached 2 storey houses and associated site works.			
<b>Development Address</b>	Rear of No. 121 Lower Main Street, 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) or does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>				
<b>Yes</b>	X	Urban Development	EIA Mandatory EIAR required	
<b>No</b>				
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>				
		<b>Threshold</b>	<b>Comment (if relevant)</b>	<b>Conclusion</b>
<b>No</b>		N/A		No EIAR or Preliminary Examination required
<b>Yes</b>	X	Urban Development		

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

## Appendix 1 - Form 2

### EIA Preliminary Examination

An Bord Pleanála Case Reference	318980-24	
Proposed Development Summary	Construction of 4 dwellings comprising 2 detached 2 storey houses and 2 semi detached 2 storey houses and associated site works.	
Development Address	Rear of No. 121 Lower Main Street, Rush, Co. Dublin	
<p>The Board carries 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.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>Proposal for 4 no residential units on town centre zoned land located in an urban area. However, the proposal is not considered exceptional in the context of the existing urban environment.</p> <p>No, the proposal will be connected to the existing water supply and will be connected to the existing public sewer. Surface water will also be connected to the public sewer.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>Site measuring 0.11 ha. with a proposed floor area of 385 sq. m. (total for 4 no. dwelling units). However, this is not considered exceptional in the context of the existing urban environment.</p> <p>There are no other developments under construction in the proximity of the site.</p>	No
Location of the Development		No

<p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p>	<p>The appeal site is not located within any Natura site. The closest such sites are Rogerstown Estuary SPA (Site code 00415) which is located approximately 600m to the southwest; Rogerstown Estuary SAC (Site code 00208) and pNHA which are located approximately 700m to the southwest; and Rockabill to Dalkey Island SAC (Site code 0030000) which is located approximately 900m to the east, however, it is not considered that the development would have a significant impact on the ecological sites.</p>	
<p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>No, there are no natural heritage designations in the immediate vicinity of the site.</p> <p>There are no other locally sensitive environmental sensitivities in the vicinity of relevance.</p>	
<p style="text-align: center;"><b>Conclusion</b></p>		
<p><b>There is no real likelihood of significant effects on the environment.</b></p> <p><b>EIA not required.</b></p>		

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

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

(only where Schedule 7A information or EIAR required)