



An
Bord
Pleanála

Inspector's Report

ABP-318987-24

Development	Construction of 40 residential units and all associated site works.
Location	Palmer Road, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F23A/0169
Applicant(s)	PWCPS (F. Price, F. Wilson, B. Carroll, T. Phelan & L. Schwer)
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Camillus Archer
Observer(s)	None
Date of Site Inspection	19 th May 2025
Inspector	Catherine Hanly

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1.0 Site Location and Description

- 1.1. The site is located in Rush, north Dublin. The site is positioned approximately 1.4km to the north of Rush's Lower Main Street which contains a range of retail services. The immediate surrounds of the site consist of agricultural lands and residential development.
- 1.2. The site is bound by Palmer Road to the north, a detached bungalow to the northwest which faces Palmer Road, agricultural greenhouses to the southwest which are accessed off Park Road, the Hyde Court residential estate to the south and a detached dormer bungalow with a green area to the rear to the east.
- 1.3. The site is relatively flat with the exception of a mound of soil along the northern boundary. The site is undeveloped and measures 1.3 ha.

2.0 Proposed Development

- 2.1. The proposed development includes:
 - The construction of 40 no. residential units comprising 30 no. terrace type units (26 no. 3 bed 2 storey houses, 2 no. 3 bed 2.5 storey houses, and 2 no. 4 bed 3 storey houses), and 10 no. semi-detached type units (8 no. 4 bed with study 2.5 storey houses and 2 no. 3 bed 2.5 storey houses)
 - All houses provided with private gardens and associated car parking
 - Proposed vehicular access via previously permitted residential development to the south accessed via Park Road (Hyde Court development substantially complete, reg. ref. F15A/0294, F15A/0294/E1, F16A/0148/PL06F.246808, F19A/0102)
 - Provision of sections of new East-West Road
 - 1 no. pedestrian/ cycle access on Palmer Road
 - Landscaping including play equipment
 - Footpaths
 - Visitor car parking
 - Boundary treatments

- Public lighting
- All associated site infrastructure
- Engineering works necessary to facilitate the development

2.2. In response to the Additional Information request the number of dwellings reduced from 40 no. dwellings to 39 no. dwellings. The 39 no. dwellings consist of 26 no. three bedroom dwellings and 13 no. four bedroom dwellings.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Notification of the Decision to Grant Permission subject to 29 no. conditions on the 11th January 2024.
- 3.1.2. Condition no. 2 states that the permission relates to 39 no. residential units.
- 3.1.3. Condition no. 4 states that the developer shall be in possession of all necessary third party consents and approvals in relation to access arrangements and connectivity.
- 3.1.4. Condition no. 17 relates to archaeological assessment and monitoring of ground disturbance.
- 3.1.5. Condition no. 18 relates to the undertaking of a badger survey.
- 3.1.6. Condition no. 23 requires the applicant to enter into an agreement, pursuant to Section 47 of the Planning and Development Act 2000, with the Planning Authority that restricts all houses and duplex units to first occupation by individual purchasers.
- 3.1.7. Condition no. 26 requires the payment of a Section 48 financial contribution in lieu of the public open space provision based on a shortfall of 0.18 ha of public open space.
- 3.1.8. Condition no. 27 relates to the lodgement of a bond or cash sum.
- 3.1.9. Condition no. 28 relates to the payment of a financial contribution of €105,637.55 in lieu of open space based on a shortfall of 1800 sqm of open space.
- 3.1.10. Condition no. 29 relates to the payment of a financial contribution in respect of public infrastructure and facilities.

3.2. Planning Authority Reports

3.2.1. Planning Report dated 8th June 2023:

- Residential use is permitted in principle within the RA zoning objective.
- The development is proposed at a net density of c. 35.7 uph, which is considered acceptable. The reduced density addresses part of the refusal reason on the previous application.
- The design does not prejudice future development to the east and west of the site.
- The dwelling types are considered appropriate and the housing layout and design would not have a negative impact on the visual amenity of the area. The elevational details and materials are acceptable in principle.
- The scale, layout and siting of the proposed dwellings would not have an undue impact on the residential amenity of adjoining properties, in terms of overlooking, visual dominance and overbearing.
- The development does not provide a childcare facility. This was considered acceptable.
- The report requested additional information in relation to 7 no. items.

3.2.2. Planning Report dated 11th January 2024 following receipt of Additional Information:

- Item no. 1 relates to the provision of an alternative façade for nos. A11 – A15 and better articulation for the dwellings facing Palmer Road. The applicant submitted revised drawings which were considered acceptable.
- Item no. 2 relates to the omission of windows on the side elevation of dwelling type B2 and B3. The applicant submitted revised designs which were considered acceptable.
- Item no. 3 relates to the request for a Climate Action Energy Statement. An Energy/ Climate Impact Analysis Report was submitted and was considered acceptable.
- Item no. 4 requested a revised landscape plan showing a minimum of 15% of the site as public open space, a kick about space, a separation distance of a

minimum of 25 m from residential units and play provision and more street trees. The SuDs proposal was requested to allow for maintenance and public use. A revised boundary treatment plan was also requested. The response was considered acceptable. The applicant proposed to provide 0.1655 ha of open space and there is a shortfall of 0.18 ha which can be addressed by a financial condition.

- Item nos. 5 and 6 relate to the road and surface water design. The response submitted was considered acceptable.
- Item no. 7 relates to the Confirmation of Feasibility. Uisce Eireann have no objection subject to condition. The response was considered acceptable to the Planning Authority.
- AA Screening: The project, individually or in combination with another plan or project will not have a significant effect on any European sites.
- EIA Screening: No EIA is required.

3.2.3. Other Technical Reports

- Parks Division: No objection subject to conditions.
- Transportation Planning Section: No objection subject to conditions.
- Heritage Officer: No objection subject to conditions.
- Water Services: No objection subject to conditions.
- Environment, Climate Action and Active Travel Department: No objection subject to condition.
- Housing: No objection subject to condition.

3.3. Prescribed Bodies

3.3.1. Uisce Eireann: No objection subject to conditions.

3.3.2. Department of Housing, Local Government and Heritage: No objection subject to conditions in relation to archaeological assessment and monitoring and the undertaking of a badger survey.

3.4. Third Party Observations

- 3.4.1. Twelve observations were received by Fingal County Council, including observations from Councillors Robert O'Donoghue and Brian Dennehy. The issues raised are as follows:

Boundaries

- The northeastern corner of the site encroaches on the land owned by the owner to the east.
- The development includes land outside the ownership of the applicant and consent has not been provided for this purpose.
- The separation distances identified between the northwestern corner of the site and the existing bungalow to the west are incorrect.

Residential and Visual Amenities

- The 2.5 and 3 storey houses (type F) are not suitable with the existing pattern of single storey houses along Palmer Road. They appear overbearing.
- The window at 1st floor in the east facing gable of the house proposed on site 6 will overlook and impact the privacy of adjacent property to the east of the site. The window should be permanently fixed shut and contain obscure glazing.
- Additional public lighting should be provided beside the playground and along the east-west road.

Planning History

- Ref. F22A/0034 was refused permission due to the development being out of character with the established pattern of development in the area, by reason of its high density, form and design of the duplex units.

Transport

- The development needs to examine how children can access schools in the area by way of active travel.

- The Rush Relief Road and East-West Boulevard should be completed in line with the Kenure LAP.
- Development of the site should be on hold until there is a new LAP for the area.
- Palmer Lane should not be used for construction traffic.
- Hyde Court is not suitable to provide vehicular access to the development.
- The housing facing onto the Palmer Road should be reversed and face back into the estate in order to curtail development on the upper Palmer Road.
- Cycling infrastructure needs to be provided along Palmer Road to facilitate connectivity to the new school site.
- The junction of Palmer Avenue and Palmer Road should be conditioned to have a signalised crosswalk for pedestrians.
- A traffic management plan should be in place during construction to ensure that deliveries do not coincide with school times.
- The taking in charge drawing does not identify that the east-west road is to be taken in charge.
- A signalised crosswalk should be provided at the junction of Palmer Avenue and Palmer Road.
- A construction management plan should be submitted.

Flooding & Surface Water

- There is a stream on the northern side of Palmer Road and the road floods in wintertime. The flood works were included in the programme of works in 2020 to alleviate flooding (R20/8508).
- Surface water from the development should not exacerbate the existing situation of surface water entering onto the North beach in Rush.
- There are issues with the drainage in Hyde Court.

Other Matters

- Community facilities are at capacity in the area.

- Existing trees and hedgerows on the site should be protected.
- The positioning of the site notice is inadequate.

4.0 **Planning History**

4.1. **Relevant Planning History on the Subject Site**

- 4.1.1. **ABP 315161-22 & Ref. F22A/0034.** Construction of 74 no. residential units and construction a section of new east-west road. 2024 **Grant**. This application included the subject site and land to the east off Palmer Avenue.
- 4.1.2. Ref. **F20A/0170.** Construction of 43 no. residential units and construction of a section of the new east-west urban street. 2021 **Refusal** for 4 no. reasons. Refused on the basis of the design, layout and configuration of public open space, the communal amenity space is remote, and the location of the bin/ bicycle store would provide an unacceptable level of amenity for future residents, the development would contravene objective DMS66 in relation to open space provision for residential units and the development would set an undesirable precedent for other developments.

4.2. **Relevant Planning History on the Land to the East**

- 4.2.1. ABP **305534-19 & Ref. SHD/003/19.** 2020 **Grant**. Construction of 165 no. units.
- 4.2.2. Ref. **F23A/0160** Construction of 14 no. residential units and provision of sections of the new East-West Road. 2023 **Grant**.

4.3. **Relevant Planning History on the Land to the West**

- 4.3.1. **PARTXI/007/24.** Construction of 32 no. residential dwellings. 2025 **Grant**.
- 4.3.2. Ref. **F18A/0014.** Construction of new dwelling. 2018 **Grant**.

4.4. **Relevant Planning History on the Land to the South**

- 4.4.1. Ref. **F15A/0294/E1.** Extension of Duration of F15A/0294. 2021 **Grant**.
- 4.4.2. Ref. **PL06F.246808 & F16A/0148.** Construction of 22 no. houses. 2016 **Grant**.
- 4.4.3. Ref. **F15A/0294.** Infrastructural site development works including roads, footpaths, cycleways, drains, sewers, watermain, surface water attenuation areas, pumping station and rising main. 2016 **Grant**.

5.0 Policy Context

5.1. Fingal Development Plan 2023 - 2029

5.2. I consider that the following policy is relevant to the assessment of this application:

Zoning

- 5.2.1. The site is zoned RA – Residential Area, with the objective to *“provide for new residential communities subject to the provision of the necessary social and physical infrastructure”*.
- 5.2.2. The site has a landscape category which is categorised as coastal.
- 5.2.3. The site is located within an area which is designated as a highly sensitive landscape.

Planning for Growth Core Strategy Settlement Strategy

- 5.2.4. Policy CSP34 – *“Consolidate the growth of Self-Sustaining towns including Malahide, Balbriggan, Lusk, Portmarnock, Rush and Skerries as set out in the Settlement Strategy for RSES and by encouraging infill development and compact growth rather than greenfield development and by intensification at appropriately identified locations.”*
- 5.2.5. Policy CSP38 – *“Consolidate development and protect the unique identities of the settlements of Malahide, Portmarnock, Balbriggan, Lusk, Rush and Skerries.”*
- 5.2.6. Objective CSO64 – *“Prepare a Local Transport Plan to inform the future transportation needs of Rush. This may include the feasibility of providing a Distributor Road to the west of Rush.”*

Sustainable Placemaking and Quality Homes

- 5.2.7. Policy SPQHP35 – *“Promote a high quality of design and layout in new residential developments at appropriate densities across Fingal, ensuring high-quality living environments for all residents in terms of the standard of individual dwelling units and the overall layout and appearance of developments. Residential developments must accord with the standards set out in the Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, DEHLG 2009 and the accompanying Urban Design Manual – A Best Practice Guide and the Sustainable Urban Housing; Design Standards for New Apartments (DHLGH as updated 2020)*

and the policies and objectives contained within the Urban Development and Building Heights Guidelines (December 2018). Developments should be consistent with standards outlined in Chapter 14 Development Management Standards.”

Green Infrastructure & Natural Heritage

- 5.2.8. Objective GINHO59 – *“Ensure that new development does not impinge in any significant way on the character, integrity and distinctiveness of highly sensitive areas and does not detract from the scenic value of the area. New development in highly sensitive areas shall not be permitted if it: “ Causes unacceptable visual harm. “ Introduces incongruous landscape elements. “ Causes the disturbance or loss of (i) landscape elements that contribute to local distinctiveness, (ii) historic elements that contribute significantly to landscape character and quality such as field or road patterns, (iii) vegetation which is a characteristic of that landscape type and (iv) the visual condition of landscape elements.”*

Development Management Standards

- 5.2.9. Objective DMSO5 - All medium to large scale planning applications (in excess of 5 residential units or 300 sq. m of retail/ commercial/office development in urban areas) or as otherwise required by the Planning Authority shall be accompanied by a Design Statement.
- 5.2.10. Table 14.12: Recommended Quantitative Standards (Sustainable Residential Developments in Urban Areas, Guidelines for Planning Authorities 2009)

Land Use	Minimum Public Open Space Standards
Overall Standard	2.5 ha per 1000 population
New residential development on greenfield sites/ LAP lands	12% - 15% site area
New residential development on infill/ brownfield sites	12% of site area

- 5.2.11. Section 14.6 sets out the design criteria for residential development in Fingal.

- 5.2.12. Table 14.6 states the following in relation to public open space:

“Public open space is accessible to the public at large and in general is intended to be ‘taken-in charge’ by the Local Authority, but in certain circumstances may be privately managed. Appropriate provision must be made for public open space within all new developments. In all instances where public open space is not provided a contribution under Section 48 will be required for the short fall. (Target minimum amount of 15% except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply.)”

5.2.13. Objective DMSO19 - residential developments shall comply with all design and floor area requirements set out in:

- Quality Housing for Sustainable Communities – Best Practice Guidelines 2007,
- Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009, the companion Urban Design Manual – A Best Practice Guide, DEHLG 2009,
- Sustainable Urban Housing: Design Standards for New Apartments 2020

5.2.14. Objective DMSO26 – *“Ensure a separation distance of at least 2.3 metres is provided between the side walls of detached, semi-detached and end of terrace units.”*

5.2.15. Objective DMSO27 – *“Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows: “ 3 bedroom houses or less to have a minimum of 60 sq. m. of private open space located behind the front building line of the house. “ Houses with 4 or more bedrooms to have a minimum of 75 sq. m. of private open space located behind the front building line of the house. Narrow strips of open space to the side of houses shall not be included in the private open space calculations.”*

5.2.16. Objective DMSO29 – *“Naming of streets and residential estates shall reflect the local placenames and local people of note, heritage, language or topographical features as appropriate and shall incorporate old placenames from the locality as much as possible and where appropriate shall be in Irish. The use of bi-lingual signage will be required.”*

- 5.2.17. Objective DMSO51 - *Require a minimum public open space provision of 2.5 hectares per 1000 population. For the purposes of this calculation, public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms.*
- 5.2.18. Objective DMSO53 - *Require minimum open space, as outlined in Table 14.12 for a proposed development site area (Target minimum amount of 15% except in cases where the developer can demonstrate that this is not possible, in which case the 12% to 15% range will apply) to be designated for use as public open space. The Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision for the acquisition of additional open space or the upgrade of existing parks and open spaces subject to these additional facilities meeting the standards specified in Table 14.11. Where the Council accepts financial contributions in lieu of open space, the contribution shall be calculated on the basis of 25% Class 2 and 75% Class 1 in addition to the development costs of the open space.*

**5.3. Fingal County Council Development Contribution Scheme 2021 – 2025
(Development Contribution Scheme)**

- 5.3.1. Note 5 relates to open space shortfalls.

5.4. Guidelines

5.5. Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities, 2024 (Compact Settlement Guidelines):

- 5.5.1. Section 3.1 states that
- 5.5.2. Table 3.1 states that residential densities in the range of 40 dph to 80 dph shall generally be applied at suburban and urban extension locations in Dublin.
- 5.5.3. SPPR1 - *When considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained.*

- 5.5.4. SPPR2 – The minimum private open space standards for houses are as follows: 1 bed house - 20 sq. m, 2 bed house - 30 sq. m, 3 bed house - 40 sq. m, 4 bed + house - 50 sq. m.
- 5.5.5. Policy and Objective 5.1 – *“The requirement in the development plan shall be for public open space provision of not less than a minimum of 10% of net site area and not more than a minimum of 15% of net site area save in exceptional circumstances.”*
- 5.5.6. *“The Planning Authority might consider that the needs of the population would be better served by the provision of a new park in the area of the upgrade or enhancement of an existing public open space or amenity. It is recommended that a provision to this effect is included within the development plan to allow for flexibility. In such circumstances, the planning authority may seek a financial contribution within the terms of Section 48 of the Planning and Development Act 2000 (as amended) in lieu of provision within an application site”.*
- 5.5.7. SPPR 3 – In intermediate and peripheral locations, the maximum rate of car parking provision for residential development, shall be 2 no. spaces per dwelling.
- 5.6. **Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas (2009)** (*Sustainable Residential Development in Urban Areas*)
- 5.6.1. Section 5.11 states that Outer Suburban/ Greenfield Sites are *“defined as open lands on the periphery of cities or larger towns whose development will require the provision of new infrastructure, roads, sewers and ancillary social and commercial facilities, schools, shops, employment and community facilities.*
- 5.6.2. *Studies have indicated that whilst the land take of the ancillary facilities remains relatively constant, the greatest efficiency in land usage on such lands will be achieved by providing net residential densities in the general range of 35-50 dwellings per hectare and such densities (involving a variety of housing types where possible) should be encouraged generally.”*
- 5.7. **Quality Housing for Sustainable Communities – Best Practice Guidelines for Delivering Homes, Sustaining Communities (DEHLG, 2007)** (*Quality Housing for Sustainable Communities*)

5.7.1. Table 5.1 sets out the space provision and room sizes for typical dwellings.

5.8. Development Management Guidelines for Planning Authorities (2007)

5.8.1. Section 5.13 sets out issues relating to title of land:

5.8.2. *“The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development. Where appropriate, an advisory note to this effect should be added at the end of the planning decision. Accordingly, where in making an application, a person asserts that he/she is the owner of the land or structure in question, and there is nothing to cast doubt on the bona fides of that assertion, the planning authority is not required to inquire further into the matter. If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However, such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.”*

5.9. Childcare Facilities – Guidelines for Planning Authorities (2001) (Childcare Facilities Guidelines)

5.9.1. Section 2.4 states that *“for new housing areas, an average of one childcare facility for each 75 dwellings would be appropriate. The threshold for provision should be established having regard to the existing geographical distribution of childcare facilities and the emerging demographic profile of areas.”*

5.10. Climate Action Plan 2025

5.10.1. The Action Plan sets out actions that are required to be undertaken in 2025, so that we are prepared to take on the challenges of our second carbon budget period 2026 – 2030.

5.11. Natural Heritage Designations

5.11.1. The following distances are noted between the site and natural heritage designations:

Site	Distance from the Subject Site
North-west Irish Sea Special Protection Area	0.8 km
Rockabill to Dalkey Island Special Area of Conservation	2 km
Rogerstown Estuary Proposed Natural Heritage Area	1.4 km
Rogerstown Estuary Special Protection Area	1.4 km
Rogerstown Estuary Special Area of Conservation	1.47 km
Loughshinny Coast Proposed Natural Heritage Area	2.9 km

5.12. EIA Screening

5.12.1. The proposed development has been subject to preliminary examination for environmental impact assessment (refer to Form 1 and Form 2 in Appendices of this report). Having regard to the characteristics and location of the proposed development and the types and characteristics of potential impacts, it is considered that there is no real likelihood of significant effects on the environment. The proposed development, therefore, does not trigger a requirement for environmental impact assessment screening and an EIAR is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. One Third-Party appeal has been lodged by Camillus Archer.

6.1.2. The grounds of the appeal can be summarised as follows:

Ownership

- Part of the development is on the land owned by Camillus Archer. A similar issue occurred at the applicant's development at Hyde Court.
- In relation to the development at Hyde Court, the applicant needed permission from Camillus Archer to bring a water pipe through his land.
- Camillus Archer has submitted 5 no. maps, which is stated represent the following:
 - Map no. 1 is an area plan. The boundaries on this map do not exist. Fingal County Council purchased the land marked folio DN163677F and fenced it. The fence comes along the side of Camillus Archer's greenhouse, not as indicated on the map. As a result, the boundary of Camillus' property has shifted to the west. Downeys are using this map as a reference resulting in the applicant trespassing on Camillus Archer's land. The boundary has moved 1.5 metres to the west.
 - Map no. 2 was given to Camillus Archer. Hyde Court was built using the boundaries as indicated by the map. The applicant built on Camillus Archer's land. The applicant is stating that they own this land but are willing to give it to Camillus Archer.
 - Map A is a PRAI Map.
 - Map B is a section of Downeys Map, indicating the mistake.
 - Map C is a section of the original Land Commission map for the land concerned.
 - Map D is a Bord Gais Eireann Map indicating the situation at the time.
- A map is required from Ordinance Survey Ireland for Hyde Court.

- Camillus Archer did not have time to obtain a survey report to accompany the appeal.

Traffic

- The permission granted to allow traffic from Hyde Court onto Park Road is a disgrace.

Local Area Plan (LAP)

- A large section of the east-west road has been omitted. The development is therefore not compliant with the LAP.

6.2. Applicant Response

Ownership

- The Planning Authority considered landownership and boundary issues in their assessment and stated that the applicant must be in possession of all necessary third-party consents. This was reflected in condition no. 4 in the Council's decision.
- The current legal boundary with the Third-Party appellant's property conforms exactly with a revised boundary line which was submitted by the Third-Party appellant to Tailte Éireann in 2015.
- The Development Management Guidelines for Planning Authorities June 2007 note that the planning system is not designed as a mechanism for resolving disputes relating to the title of land. These are civil matters to be resolved through the legal system.

East-West Road

- There is no active statutory LAP for the area.
- The Kenure Local Area Plan 2009, which expired on the 9th February 2019, did set out a development strategy for these residentially zoned lands. The proposed development has been guided by this document.
- The proposed development provides for a further section of the East-West road across the full extent of the southern boundary of the application site

which supports the delivery of the emerging east-west urban street in the area.

- The Fingal Development Plan 2023 – 2029 (*Fingal DP*) does not contain any objectives for an LAP on the subject site.

6.3. Planning Authority Response

6.3.1. The Planning Authority's response to the grounds of appeal can be summarised as follows:

- The matters raised relating to the site boundaries and land ownership are civil matters between the applicants and third parties.
- The Development Management Guidelines for Planning Authorities June 2007 note that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land. These are matters for resolution in the Courts.
- Section 34(13) of the Planning Act states that a person is not entitled solely by reason of a permission to carry out any development.
- In the event that the Planning Authority's decision is upheld, the Planning Authority requests that conditions requiring financial contributions and or Bonds in accordance with Section 48 Development Contribution Scheme are included in An Bord Pleanála's determination.

6.4. Observations

6.4.1. None.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the reports of the local authority, and having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this appeal to be considered are as follows:

- Principle of Development
- Ownership
- Design and Visual Impact
- Open Space and Landscaping
- Residential Amenity
- Access and Parking
- Flooding and Drainage
- Other Matters

7.1.1. Each of these issues are addressed in turn below.

7.2. Principle of Development

7.2.1. The proposed development is located on land zoned RA – Residential Area. Land zoned RA has the objective to “*provide for new residential communities subject to the provision of the necessary social and physical infrastructure*”. Residential development is permitted in principle on land zoned RA. Generally, the principle of constructing houses on the site is acceptable under the zoning objective for the site. However, the site occupies a prominent position addressing Palmer Road. Therefore, the impact of the development on the amenities of adjacent properties and the streetscape must be considered. As such, there are a number of other considerations which must be examined, and these are addressed in subsequent sections below.

7.3. Ownership

7.3.1. Observations have been submitted to the Planning Authority stating that the boundaries of the site encroach into adjacent properties. I also note the grounds of appeal which state that the subject development trespasses onto the land to the southwest of the site. The appellant has submitted 5 no. maps and drawings. I note that the drawing identified as B, is an extract from the subject application. The drawing identifies a line marked by the appellant to the southwest of the site in the Hyde Court estate. The line contains a note stating, “*boundary on map*”. This line differs to the blue ownership line on the original drawing which the Third-Party claims extends into their land to the west. The appellant has also included a section of a

map from the original Land Commission map, identified as map C, where the Third-Party has identified “Hyde Corner”.

- 7.3.2. The First-Party has responded, stating that the current legal boundary conforms exactly with a revised boundary line which was submitted by the appellant to Tailte Eireann in 2015.
- 7.3.3. I note the Planning Authority’s response which states that matters relating to site boundaries and land ownership are civil matters. The Planning Authority also reference the Development Management Guidelines for Planning Authorities (2007) which note that the planning system is not designed as a mechanism for resolving disputes about title to land or rights over land. The Planning Authority also reference Section 34(13) of the Planning Act which states that a person is not entitled solely by reason of a permission to carry out any development.
- 7.3.4. I appreciate the concerns raised by the appellants and observations regarding their concerns surrounding the boundaries of the development. I note section 5.13 in the Development Management Guidelines for Planning Authorities (*Development Management Guidelines*) which states the following:
- 7.3.5. *“The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts. In this regard, it should be noted that, as section 34(13) of the Planning Act states, a person is not be entitled solely by reason of a permission to carry out any development.”*
- 7.3.6. The *Development Management Guidelines* further states the following:
- 7.3.7. *“If, however, the terms of the application itself, or a submission made by a third party, or information which may otherwise reach the authority, raise doubts as to the sufficiency of the legal interest, further information may have to be sought under Article 33 of the Regulations. Only where it is clear from the response that the applicant does not have sufficient legal interest should permission be refused on that basis. If notwithstanding the further information, some doubt still remains, the planning authority may decide to grant permission. However such a grant of permission is subject to the provisions of section 34(13) of the Act, referred to above. In other words the developer must be certain under civil law that he/she has all rights in the land to execute the grant of permission.”*

7.3.8. I note section 10 of the Application Form which states that the applicant is the owner of the site. I have examined the site on Land Direct and I note that the area identified as “Hyde Corner” does not follow the blue ownership line as identified in the application drawings. However, I also note that the area in question identified as “Hyde Corner” on the drawings and maps is located outside the red line boundary for the site which encloses the area subject to this application. This is shown on Map B submitted by the Third-Party. Whilst I have some doubt as to the accuracy of the blue ownership line identified by the First-Party applicant at “Hyde Corner”, I do not have any doubt regarding the red and blue line for the proposed development. As such, I concur with the Planning Authority that the site boundaries and land ownership are a civil matter. In accordance with the *Development Management Guidelines*, I consider that the planning system is not designed as a mechanism for resolving disputes about title to land. I also note that in accordance with Section 34(13) of the Planning and Development Act (2000 as amended), a person is not entitled solely by reason of a permission to carry out development.

7.3.9. In the Notification of Decision to Grant Permission, the Planning Authority included condition no. 4, which states that that the developer shall be in possession of all necessary third party consents and approvals in relation to access arrangements and connectivity. Should the Board consider granting planning permission, I recommend that a similar condition is included in order to ensure that the appellant is not worse off due to this appeal.

7.4. Design and Visual Impact

7.4.1. The proposed residential development comprises a combination of 3 and 4 no. bedroom terraced and semi-detached dwellings across 2, 2.5 and 3 no. storeys.

7.4.2. Six dwellings are orientated to the north and are accessed off Palmer Road. The dwellings are set back from Palmer Road with designated car parking provided to the front of each dwelling. Pedestrian access is provided from Palmer Road which leads to the central area of public open space.

7.4.3. The dwellings along the eastern and western boundaries of the site have been orientated to overlook the central area of public open space, thereby providing passive surveillance. The dwellings along the southern boundary of the site are orientated to the south to overlook a new section of the east-west link road which

contains footpaths and cycle lanes and runs along the full length of the site's southern boundary. Vehicular access to these dwellings is provided via the Hyde Court development to the south. Whilst I note that the lands to the east and west of the site are undeveloped, I consider that the proposed design would not prejudice the future development potential to the adjacent sites.

Density

- 7.4.4. From my site inspection, I noted a number of recently constructed residential developments in proximity to the site. It is therefore evident that the surrounding area is transitioning to an area of urban growth.
- 7.4.5. I note in the Planning Authority's assessment that the site was considered to be located in an "Outer Suburban/ Greenfield Site" in accordance with the Sustainable Residential Development in Urban Areas (2009) where a net density of 35 – 50 dwellings per hectare is considered appropriate. The Planning Authority noted that the subject development excluded the area required for the east-west road, resulting in a site area of 1.1 ha and a net density of c. 35.7 uph. The Planning Authority considered that this density was acceptable. I note however that the number of dwellings was reduced from forty to thirty nine in response to the Additional Information request due to amendments to the site layout which involved increasing the size of the public open space. This resulted in a net density of 34.9 uph. When rounded up this equates to 35 uph.
- 7.4.6. Section 14.6.3 of the *Fingal DP* states that density should be provided with reference to the *Sustainable Residential Development in Urban Areas* Guidelines. I have examined section 5.11 of *Sustainable Residential Development in Urban Areas* and I concur with the Planning Authority that the site is located in an Outer Suburban/ Greenfield site. Having regard to the established and emerging pattern of development in the area and the location of the site in a transitional location within the settlement boundary of Rush, I am satisfied that the proposed density is acceptable.

Boundary Treatments

- 7.4.7. I consider that the boundary treatments have been well considered and include a 1.8 m high blockwork rendered wall on the eastern and western boundaries of the site.

Internally within the site, private rear gardens on corner plots or locations which are visible from the public road are enclosed with a 1.8 m high brick wall.

- 7.4.8. I note the concerns raised by the observations which were submitted to the Planning Authority in relation to the 2.5 and 3 storey dwellings being out of character with the area and that they will appear overbearing. I note that the Planning Authority had no concerns regarding the design and visual impact of the development which was addressed at further information stage to amend finishes and provide greater vertical emphasis on some of the dwellings.
- 7.4.9. At my site inspection, I examined the area surrounding the site. Whilst I note that there are bungalows abutting the eastern and western corners of the northern boundary of the site, I also noted that the area is undergoing significant change with 3 storey apartments and 2.5 storey dwellings on Palmer Avenue to the north. As such, I do not consider that the proposed development is out of character with the surrounding area. Having regard to the setbacks from the boundaries, the proposed building heights and road layout, I am also satisfied that the design of the development will not appear overbearing.

7.5. Open Space and Landscaping

Quantity

- 7.5.1. The subject site measures 1.3 ha. The site layout identifies that the nett site area (excluding the east-west link road) is 1.154 ha. The 12 – 15% public open space requirement on the nett site area would result in a public open space provision of between 0.138 ha and 0.17 ha.
- 7.5.2. The Site Layout Plan identifies that 1,675 m² (0.1675 ha) of public open space is proposed, which I have calculated amounts to 14.5% of the nett site area. As per Section 14.13.2 of the *Fingal DP*, the overall standard for public open space provision is a minimum 2.5 hectares per 1000 population. For the purposes of this calculation, Objective DMS051 of the *Fingal DP* notes that public open space requirements are to be based on residential units with an agreed occupancy rate of 3.5 persons in the case of dwellings with three or more bedrooms and 1.5 persons in the case of dwellings with two or fewer bedrooms. On the basis of the mix of units

proposed at Additional Information stage to the Planning Authority, the proposal would generate a requirement to provide 0.34 ha of public open space. However, I note that table 14.12 of the *Fingal DP* also outlines a minimum public open space requirement of between 12-15% of the site area for new residential development on greenfield sites. In addition, it is policy (Objective DMSO53 – Financial Contribution in Lieu of Public Open Space) of the *Fingal DP* that a minimum target amount of 15% is expected, except in cases where the developer can demonstrate that this is not possible. However, the Council has the discretion to accept a financial contribution in lieu of the remaining open space requirement to allow provision for the acquisition of additional open space or the upgrade of existing parks and open spaces.

- 7.5.3. Although the application does not provide the overall standard of 0.34 ha, the proposal is generally compliant with the alternative standard for new residential developments on greenfield sites (i.e. 12-15% range). Given that the proposal includes the partial construction of the east-west link road, I consider that it is reasonable for this standard to be applied to the developable site area. I am also conscious of Section 4.19 of the Sustainable Residential Developments in Urban Areas – Guidelines for Planning Authorities, which notes the practice of including such standards in development plans but highlights the difficulty of the approach given the unpredictability of occupancy rates. Therefore, having regard to the location, layout and design of the open space and its accessibility to the general public, I am satisfied that the public open space arrangement is generally in accordance with the policy provisions of the *Fingal DP* and will afford a good standard of amenity to its future occupants.
- 7.5.4. Notwithstanding the foregoing, I acknowledge the *Fingal DP* seeks a minimum target amount of 15% for greenfield sites. In this regard, it is my view that a financial contribution is warranted in this instance in lieu of the public open space shortfall as per the provisions of Objective DMSO53 of the *Fingal DP*. A suitable condition can therefore be attached to a grant of permission. On the basis of the provision of 0.1675 ha of public open space, the proposed development results in a shortfall of 0.003 ha ($0.17 \text{ (15\% of the net site area)} - 0.1675 = 0.003 \text{ ha}$). I recommend that this shortfall is charged in accordance with “note 5” in the Development Contribution Scheme.

Landscaping

- 7.5.5. With regards to landscaping, the development proposes to provide a central area of open space which contains a natural play area, a kickabout space and a bio-retention area. The open space is lined with trees and trees are also proposed between a number of the driveways and along both sides of the east-west link road. I note that as part of the Additional Information request, the applicant was requested to provide, a 25 m separation distance between the residential units and the play provision, a revised SuDs proposal to allow general grass maintenance and use by the public, a street tree planting plan, amended boundary treatments where rear or side walls face public roads and to increase the separation distance between proposed tree planting and boundary walls in order to avoid potential structural damage. I note that the response submitted by the applicant to the Planning Authority was considered acceptable subject to conditions in relation the submission of a revised landscape plan (the proposed see-saw is to be replaced by a balance beam, signage and lamp standards should be on hard standing, tree species on the public open spaces shall be larger growing trees and slopes to SuDs shall be a minimum of 1:5) and management and maintenance plan (focus should be given to short, medium and long term maintenance of SuDS features) for agreement with the Parks and Green Infrastructure Division and the fencing off of the public open space prior to the commencement of development. Should the Board consider granting permission, I recommend that similar conditions are included.
- 7.5.6. One of the observations submitted to the Planning Authority raised concern that the existing trees and shrubs on the site should be protected. I have reviewed the Arboricultural Assessment which was submitted to the Planning Authority which confirms that there are no trees located on the site. Having inspected the site and noting the results from the Arboricultural Assessment, I am satisfied that the development will not impact any trees on the site.

7.6. Residential Amenity

Overlooking

- 7.6.1. I note the observations submitted to the Planning Authority regarding the impact of the development on privacy of the dwelling to the east of the site by way of

overlooking from the east facing gable on dwelling no. 6. The observation requested that the window should be permanently fixed shut and contain obscure glazing.

- 7.6.2. I note that house type F is proposed in the north-eastern corner of the site, and it contains 2 no. windows at first and second floor on the eastern elevation. At first floor the window serves the hall and at second floor the window serves an ensuite. I consider that in order to aid air circulation of the dwelling, the windows should not be fixed shut. However, I appreciate the concerns raised by the observer and I recommend that a condition is included in any grant of permission requiring the window on the eastern elevation at first and second floor of house type F6 to be fitted with obscure glazing.
- 7.6.3. With regards to dwelling C1 which is proposed in the north western corner of the site, 2 no. windows are proposed on the western side elevation at the first and second floor. I note that these windows are proposed to serve a bathroom and ensuite. Should the Board consider granting permission, I recommend the inclusion of a condition requiring that windows serving ensuites and bathrooms in all dwellings are fitted with obscure glazing. I am satisfied that this will protect the residential amenities of future tenants and the residents of the dwelling to the west of the site.

Floor Areas and Private Open Space

- 7.6.4. I note the minimum requirements set out in Objective DMSO27 in the *Fingal DP* in relation to private open space. I have examined the proposed drawings, and I am satisfied that they comply with Objective DMSO27.
- 7.6.5. In relation to floor areas, I note that objective DMSO19 in the *Fingal DP* states that the floor areas for residential development shall comply with *Quality Housing for Sustainable Communities*. I have examined the proposed drawings, and I am satisfied that the floor areas comply with the floor areas set out in table 5.1 of *Quality Housing for Sustainable Communities*. Furthermore, I note that the Planning Authority had no concerns in this regard.

Separation Distances

- 7.6.6. SPPR 1 of the *Compact Settlement Guidelines* requires that a minimum separation distance of at least 16 m is provided between opposing windows serving habitable rooms at the rear or side of houses.

- 7.6.7. I have examined the drawings, and I am satisfied that the proposed dwellings comply with SPPR 1 of the *Compact Settlement Guidelines* in relation to separation distances. Furthermore, I note that the Planning Authority had no concerns regarding the separation distances.

Construction

- 7.6.8. The applicant has submitted an Outline Construction Management Plan as part of the application. I note the report from the Transportation Planning Section in Fingal County Council which recommends including a condition in relation to a detailed Construction Management Plan and Construction Traffic Management Plan. I note that this condition was included in the Notification of Decision to Grant Permission by the Planning Authority. I recommend that this condition should be included in any grant of permission to ensure that there is no undue impact on the amenities of the area during the construction phase.

7.7. Access and Parking

East-West Road

- 7.7.1. The Engineering Report submitted with the application outlines that vehicular access to the site is via a new priority junction on the east-west link road along the southern boundary of the site. However, until full completion of the east-west link road and its connection to the existing public road network, the development is proposed to be accessed via the Hyde Court development located to the south of the appeal site. The Site Location Map identifies that there is a wayleave over the road running through Hyde Court leading to the subject site.
- 7.7.2. The grounds of appeal raise concern regarding the proposed access via Hyde Court. I note that this was also raised in a number of the observations submitted to the Planning Authority along with concern regarding permeability between the site and the wider area. The grounds of appeal also raise concern about the delivery of the east-west road and state that the development is not compliant with the Kenure Local Area Plan (*Kenure LAP*).
- 7.7.3. I note the response from the First-Party which highlights that the *Kenure LAP* expired on the 9th February 2019. The First-Party states that the development has been

guided by the *Kenure LAP* and that there are no objectives for an LAP on the subject site in the *Fingal DP*.

- 7.7.4. I note the report from the Transportation Planning Section following the receipt of the Additional Information which stated that they had no objection to the proposed development subject to 10 no. conditions. I note that the conditions relate to structures or landscaping which may impact visibility at entrances and junctions, universal access, raising of the cycle track on the east-west road, the transition of Palmer Road, a stage 1 and 2 road safety audit, electrical connections for the provision of future electrical vehicle charging points, a detailed Construction Management Plan and Construction Traffic Management Plan, the relocation of underground services and overhead poles and the disposal of stormwater and taking in charge standards. Should the Board consider granting planning permission, I recommend that these matters are addressed by way of conditions.
- 7.7.5. I agree with the First-Party that the *Kenure LAP* expired 9th February 2019. Furthermore, I have examined the *Fingal DP*, and I am satisfied that there are no objectives for an LAP, nor any transport objectives on the subject site.
- 7.7.6. At my site inspection, I noted that elements of the east-west urban street as formerly identified in the *Kenure LAP* have already been constructed to the east of the site along Mariners Avenue. Whilst there are no transport objectives on the subject site requiring the delivery of the east-west road, I am satisfied that the east-west road along the southern boundary of the site has been appropriately designed (subject to conditions as outlined above) to connect to the eastern and western boundaries of the site and will in time provide permeability between the sites.
- 7.7.7. I note from the Proposed Landscape Layout and Boundary Details drawing that a 1.8 m high rendered blockwork wall with brick capping is proposed along the eastern and western boundaries of the site. This boundary is proposed alongside the east-west road. I consider that this boundary treatment is appropriate in the current environment when the road has not been developed to the east and west. However, should the Board consider granting permission, I recommend that a condition is included requiring unimpeded permeability for vehicles, pedestrians and cyclists from the subject site to the east-west road to the east and west of the site on completion of the road to the boundary outside of the site.

Taking in Charge

- 7.7.8. One of the submissions to the Planning Authority raised concern that the Taking in Charge drawing does not identify the east-west road as an area which is proposed to be taken in charge by the Local Authority. I note the report from the Transportation Planning Section stated that they had no issue with the Taking in Charge drawing which was submitted.
- 7.7.9. I have examined the Taking in Charge drawing, and I note that it does not identify the east-west road as an area which is proposed to be taken in charge. Should the Board consider granting permission, I recommend that this is addressed by way of condition requiring the submission of a taking in charge drawing for agreement with the Planning Authority.

Parking

- 7.7.10. Each dwelling is provided with 2 no. parking spaces. The development is also proposed to be served by 7 no. visitor spaces, one of which is an accessible space. In accordance with the *Fingal DP*, I note that the site is located in zone 2 which has a maximum parking standard of 2 no. spaces per unit and 1 no. space per 5 no. units. Having regard to the proposed parking layout, I therefore consider that the parking provision is acceptable and in accordance with the *Fingal DP*.

Access

- 7.7.11. The development is proposed to be accessed through the Hyde Court development to the south of the site. I note the concerns raised by the submissions to the Planning Authority regarding the creation of additional traffic and safety concerns regarding the proposed access through the Hyde Court estate.
- 7.7.12. I have reviewed the Engineering Services Report which the applicant submitted to the Planning Authority as part of the application. I note that the report concludes that the development will not generate excessive vehicular traffic flows. The development is predicted to result in 29 trips during the AM peak hour and 24 trips during the PM peak hour. I understand the concerns raised by the submissions that the development will generate additional traffic in the Hyde Court estate and this is confirmed by the trip generation rates set out above from the Engineering Services

Report. However, having regard to the small scale of the development at 39 no. dwellings, the predicted vehicular traffic flows and the design of the east-west road which in time may provide connectivity to adjacent sites, I am satisfied that the additional level of traffic and access through the Hyde Court estate is acceptable

7.8. Flooding and Drainage

- 7.8.1. I note observations were submitted to the Planning Authority raising concern regarding surface water generated by the development and identifying a history of flooding on Palmer Road.
- 7.8.2. I note the contents of the Site Specific Flood Risk Assessment which accompanies the application. The Assessment identifies that there have been no recorded flood events on the site and that the site is outside the 0.1% AEP zone. It also identifies that predicted flood mapping for pluvial, tidal and fluvial flood events shall not affect the site. The Assessment concludes that the likelihood of onsite flooding from the hydrogeological ground conditions are minor and within acceptable levels.
- 7.8.3. I note that the report from the Water Services Department in the Planning Authority states no objection in relation to flood risk. I have examined the Strategic Flood Risk Assessment mapping, and I note that no flooding is identified on the subject site, Palmer Road or in any area in the immediate vicinity of the site. As such, having regard to the Strategic Flood Risk Assessment mapping, the Site Specific Flood Risk Assessment and the report from the Water Services Department, I am satisfied that the development is not at risk of flooding.
- 7.8.4. In response to the Additional Information request, I note that the development is proposing to connect to the storm water pipe serving Hyde Court, which upon completion of the development will be proposed to be taken in charge. I note that the Planning Authority had no objection to this proposal, subject to conditions in relation to the discharge of surface water. Should the Board consider granting permission, I recommend that these conditions are included.
- 7.8.5. Furthermore, I note the report from Uisce Eireann which has no objection to the proposed development subject to the inclusion of a condition in relation to the signing of a connection agreement.

7.9. Other Matters

Archaeology

- 7.9.1. The applicant has submitted an Archaeological Impact Assessment and Test Trenching Report. The report identifies that following a geophysical survey, a possible small curving ditch or gully was identified. Test trenching was conducted which discovered a possible ditch and a masonry structure. I note the report from the Department of Housing, Local Government and Heritage which recommends the inclusion of 3 no. conditions in relation to further archaeological assessment, monitoring of ground works and the production of a report noting the results of the monitoring. Should the Board consider granting permission, I recommend that these conditions are included.

Nature Conservation

I note the report from the Department of Housing, Local Government and Heritage which states that the development has the potential to disturb a badger sett due to the scrub habitat. The report notes that badgers and their setts are protected under the Wildlife Acts. The report recommends including a condition requiring that a badger survey be undertaken prior to the commencement of work. Should the Board consider granting permission, I recommend that this condition is included.

Childcare

- 7.9.2. The observations submitted to the Planning Authority raised concern that the community facilities in the area are already at capacity. In relation to childcare, I note that section 8.1 of the Planning Statement submitted with the application provides a Childcare Provision Assessment. The Assessment identifies that there are 8 no. registered childcare providers in the area and that in September 2023, there were 27 no. spaces available. The Assessment outlines that it is estimated that up to 10 no. children will be in the 0-4 age cohort. The Assessment concludes by stating that it considers there to be sufficient capacity in the existing childcare facilities to cater for the town's future demand.
- 7.9.3. I note the *Childcare Facilities Guidelines* states that for new housing areas, an average of one childcare facility for each 75 no. dwellings would be appropriate. Having regard to the results of the Childcare Provision Assessment which identify that the development has the potential to generate up to 10 no. childcare spaces and

that the development is for 39 no. dwellings, I consider that the omission of a childcare facility from the development is acceptable.

8.0 Water Framework Directive

- 8.1. I conclude that on the basis of objective information, that the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.
- 8.2. I refer the Board to Appendix 3 for my screening assessment.

9.0 AA Screening

- 9.1. I have considered the proposed development in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 9.2. The subject site is located approximately 0.8 km from the North-west Irish Sea Special Protection Area and 1.4 km from Rogerstown Estuary SPA and SAC.
- 9.3. The proposed development comprises the construction of 39 no. dwellings.
- 9.4. Having considered the nature, scale and location of the project, I am satisfied that it can be eliminated from further assessment because it could not have any effect on a European Site.
- 9.5. The reason for this conclusion is as follows:
- Taking into account the Appropriate Assessment Screening Report prepared by Altamar which accompanied the application. The report identifies that there are no direct pathways from the site to European sites. The report also identifies that as surface water from the site will ultimately discharge to the Irish Sea there is an indirect hydrological pathway to European Sites located within the marine environment via surface water drainage. The report also identifies that there is an indirect pathway to Rogerstown Estuary SAC and SPA via the foul water drainage network. The report however states that given the minimum distance to the nearest European Site (1.4 km to Rogerstown Estuary SPA) across a substantial marine environment, and the fact that foul

wastewater will be treated along the foul network, in the absence of mitigation measures, no significant effects on the conservation objectives or qualifying interests of any European sites are likely. The report concludes that no specific mitigation is required to prevent impacts on European sites.

- The North-west Irish Sea Special Protection Area, which is located 0.8 km away.
- Taking into account the screening determination by the Planning Authority which concludes that there is no likelihood of significant effects on any European sites during the construction or operation of the project.

I conclude, on the basis of objective information, that the proposed development would not have a likely significant effect on any European Site either alone or in combination with other plans or projects.

9.6. Likely significant effects are excluded and therefore Appropriate Assessment (under Section 177V of the Planning and Development Act 2000) is not required.

10.0 Recommendation

10.1. I recommend that permission be granted for the following reasons and considerations, subject to conditions.

11.0 Reasons and Considerations

11.1. Having regard:

- i. The site's location on lands with a zoning objective for residential development, and the policy objectives and provisions in the Fingal County Development Plan 2023 – 2029 in respect of residential development,
- ii. The nature, scale and design of the proposed development which is consistent with the provisions of the Fingal County Development Plan 2023 - 2029 and appendices contained therein,

- iii. The Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas, issued by the Department of the Environment, Heritage and Local Government in May 2009,
- iv. The pattern of existing and permitted development in the area, and
- v. To the observations and contents of the appeal received,

It is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area or of property in the vicinity, would be acceptable in terms of urban design, height and density of development and would be acceptable in terms of traffic and pedestrian safety. The proposed development would, therefore be in accordance with the proper planning and sustainable development of the area.

12.0 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 the further plans and particulars received by the planning authority on the 6th 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 grant of permission relates to 39 no. residential units.</p> <p>Reason: In the interests of clarity.</p>
3.	<p>Prior to commencement of development, the applicant 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 transfer of a percentage of the land, to be agreed with the planning authority, in accordance with the requirements of section 94(4) and section 96(2) and</p>

	<p>96(3)(a), (Part V) of the Planning and Development Act 2000, as amended, and/or the provision of housing on lands in accordance with the requirements of section 94(4) and section 96(2) and 96(3) (b), (Part V) of the Planning and Development Act 2000, as amended], unless an exemption certificate has been granted under section 97 of the Act, as amended. Where such an agreement cannot be reached between the parties, the matter in dispute (other than a matter to which section 96(7) applies) shall be referred by the planning authority or any other prospective party to the agreement, to An Bord Pleanála for determination.</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 for the area.</p>
4.	<p>The following shall be complied with:</p> <p>Prior to the commencement of the development as permitted, the applicant or any person with an interest in the land shall enter into an agreement with the planning authority (such agreement must specify the number and location of each house or duplex unit), pursuant to Section 47 of the Planning and Development Act 2000, that restricts all relevant residential units permitted, to first occupation by individual purchasers i.e. those not being a corporate entity, and/or by those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>An agreement pursuant to Section 47 shall be applicable for the period of duration of the planning permission, except where after not less than two years from the date of completion of each specified housing unit, it is demonstrated to the satisfaction of the planning authority that it has not been possible to transact each of the residential units for use by individual purchasers and/or to those eligible for the occupation of social and/or affordable housing, including cost rental housing.</p> <p>The determination of the planning authority as required in (b) shall be subject to receipt by the planning and housing authority of satisfactory documentary evidence from the applicant or any person with an interest in</p>

	<p>the land regarding the sales and marketing of the specified housing units, in which case the planning authority shall confirm in writing to the applicant or any person with an interest in the land that the Section 47 agreement has been terminated and that the requirement of this planning condition has been discharged in respect of each specified housing unit.</p> <p>Reason: To restrict new housing development to use by persons of a particular class or description in order to ensure an adequate choice and supply of housing, including affordable housing, in the common good.</p>
5.	<p>Bilingual proposals for an estate/street name, house/apartment numbering scheme and associated signage shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Thereafter, all estate and street signs, and house/apartment numbers, shall be provided in accordance with the agreed scheme. (The proposed name(s) shall be based on local historical or topographical features, or other alternatives acceptable to the planning authority). No advertisements/marketing signage relating to the name(s) of the development shall be erected until the developer has obtained the planning authority's written agreement to the proposed name(s).</p> <p>Reason: In the interest of urban legibility (and to ensure the use of locally appropriate placenames for new residential areas).</p>
6.	<p>Public lighting shall be provided in accordance with a scheme which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development. The scheme shall include lighting along pedestrian routes, through open spaces and shall take account of trees within the revised landscape plan drawing. Such lighting shall be provided prior to the making available for occupation of any residential unit.</p> <p>Reason: In the interest of amenity and public safety.</p>
7.	<p>The following requirements shall be complied with in full:</p>

	<ul style="list-style-type: none"> i. No objects, structures or landscaping shall be placed or installed within the visibility triangle at the vehicular entrances and junctions, exceeding a height of 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes. ii. The layout of the front garden, landscaping, paving and in-curtilage carparking should allow for space for universal access to the front doors of the houses, the detail of which shall be agreed in writing with the planning authority prior to commencement of development. iii. The road cross-section of the section of the 'east-west road' should be further developed and submitted for the written approval of the Planning Authority prior to commencement of development, the cycle track should generally be raised 50mm from the road surface and as per the typical details contained in Figure 4.79 in section 4.3.6.1 of the NTAs Cycle Design Manual. iv. The overall transition detail of the section of widened road and footpath along Palmer Road with the existing Palmer Road in the north-western corner of the site boundary shall be agreed in writing with the planning authority prior to commencement of development. v. A Stage 1 Road Safety Audit, and Stage 2 Road Safety Audit shall be submitted for the written approval of the Planning Authority, Prior to commencement of development. vi. 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 EV charging points. vii. All underground or overhead services and poles shall be relocated, as may be necessary, to a suitable location adjacent to the new boundary. viii. All stormwater shall be disposed of to soakpits or drains within the site and shall not discharge onto the public road.
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	<p>ix. The developer shall construct and maintain to the Councils standard for taking in charge all the roads, including footpaths, verges, public lighting, open space, sewers, watermains or drains, forming part of the development; whether it is intended to be taken in charge by the Council or not.</p> <p>Reason: In the interest of traffic safety and proper planning and sustainable development.</p>
8.	<p>The attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.</p> <p>Reason: In the interest of public health</p>
9.	<p>Prior to the commencement of development the developer shall enter into a Connection Agreement (s) with Uisce Éireann (Irish Water) to provide for a service connection(s) to the public water supply and/or wastewater collection network.</p> <p>Reason: In the interest of public health and to ensure adequate water/wastewater facilities.</p>
10.	<p>The Developer shall construct and maintain to the Council's standard for taking in charge all the roads, including footpaths, verges, public lighting, sewers, watermains or drains, forming part of the development, until taken in charge by the Council. A drawing identifying the areas proposed to be taken in charge shall be submitted to the Planning Authority for agreement prior to the commencement of development.</p> <p>Reason: In the interest of the proper planning and sustainable development of the area.</p>
11.	<p>The following requirements shall be complied with in full:</p>

	<p>a) Prior to the commencement of works on site, a revised landscape plan and management and maintenance plan (with particular reference to the short, medium and long term maintenance of SuDs features) shall be submitted for written agreement.</p> <p>b) Prior to the commencement of works on site, the Public Open Space including SuDs shall be fenced off and shall not be used as a site compound, car park or for the storage of material.</p> <p>Reason: In the interest of biodiversity and visual amenity.</p>
12.	<p>Prior to the commencement of development, the Developer shall undertake a badger survey. If any active badger setts are located, the National Roads Authority Guidelines for the treatment of setts prior to the construction of road schemes shall be adhered to.</p> <p>Reason: In the interest of wildlife and biodiversity.</p>
13.	<p>A detailed Construction Management Plan and Construction Traffic Management Plan shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The plan shall include details of arrangements for routes for construction traffic, parking during the construction phase, the location of the compound for storage of plant and machinery and the location for storage of deliveries to the site.</p> <p>Reason: In the interest of sustainable transport and safety.</p>
14.	<p>Prior to the commencement of development, the developer shall prepare a Construction and Demolition Resource Waste Management Plan (RWMP) as set out in the Best Practice Guidelines for the Preparation of Resources and Waste Management Plans for C & D Projects (2021). The RWMP shall include details of the various waste streams and expected tonnages which will be generated during site clearance, demolition and construction phases and any proposed exportation or importation of soil and stone material during destination/ source locations, quantities and if any material will be assessed under By-Product notification. The RWMP shall also include specific proposals as to how the RWMP will be measured and monitored</p>

	<p>for effectiveness. All records (including for waste and all resources) pursuant to the agreed RWMP shall be made available for inspection at the site office at all times.</p> <p>Reason: In the interest of proper waste management and sustainable development.</p>
15.	<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 and maintenance until taken in charge by the local authority of roads, footpaths, watermains, drains, public 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 or maintenance 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 and maintenance of the development until taken in charge.</p>
16.	<p>The developer shall pay to the planning authority a financial contribution in lieu of the public open space requirement in respect of public open space benefitting the development in the area of the planning authority is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the adopted Development Contribution Scheme made under Section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any 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</p>

	<p>determine the proper application of the terms of the Scheme. The shortfall in public open space for the purpose of this condition is set at 0.003 ha.</p> <p>Reason: It is a requirement of the Planning and Development Act, 2000, as amended, that a condition requiring contribution in accordance with the Development Contribution Scheme made under Section 48 of the Act be applied to the permission.</p>
17.	<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>
18.	<p>The developer shall be in possession of all necessary third party consents and approvals in relation to access arrangements and connectivity prior to the commencement of development.</p> <p>Reason: In the interests of orderly development.</p>
19.	<p>All external finishes to the dwelling units shall accord with the details submitted with the planning application and as set out in the Additional</p>

	<p>Information lodged with the planning authority on the 6th December 2023, unless otherwise agreed in writing.</p> <p>Reason: In the interests of visual amenities.</p>
20.	<p>All service cables associated with the proposed development shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interest of orderly development and the visual amenities of the area.</p>
21.	<p>All bathroom/ en-suite windows shall be fitted and permanently maintained with obscure glass. The use of film is not acceptable.</p> <p>Reason: In the interests of residential amenity.</p>
22.	<p>The window on the eastern elevation at first-floor level of house type F6 shall be fitted with obscure glass. The use of film is not acceptable.</p> <p>Reason: In the interests of residential amenity.</p>
23.	<p>The following requirements shall be complied with in full:</p> <ul style="list-style-type: none"> i. The applicant is required to engage the services of a suitably qualified archaeologist to co-ordinate the mitigation proposals for further Archaeological Assessment and Monitoring of ground disturbance as described in the Archaeological Impact Assessment Report (Section 5.2, page 42). ii. Should previously unidentified archaeological material be found during the course of assessment and monitoring, the archaeologist may have work on the site stopped, pending a decision as to how best to deal with the archaeology. The developer shall be prepared to be advised by the Department of Housing, Local Government and Heritage with regard to any necessary mitigating action (e.g. preservation in situ, or preservation by record) and should facilitate the archaeologist in recording any material found.

	<p>iii. The Planning Authority and the Department of Housing, Local Government and Heritage shall be furnished with a report describing the results of the monitoring.</p> <p>Reason: To ensure the continued preservation (either in situ or by record) of places, caves, sites, features or other objects or archaeological interest.</p>
24.	<p>The development shall provide unimpeded permeability for vehicles, pedestrians and cyclists from the subject site along the east-west road to the east and west of the site on completion of the road outside the boundary of the site.</p> <p>Reason: To enhance permeability in the area.</p>
25.	<p>The following requirements shall be complied with in full:</p> <ul style="list-style-type: none"> i. The hours of operation during construction shall be restricted to 8.00 am to 7.00 pm, Monday to Friday, and 8.00 am to 2.00 pm on Saturdays. ii. No activities shall take place on site on Sundays or bank holidays. <p>Reason: In the interests of residential amenity.</p>
26.	<p>The following shall be complied with:</p> <ul style="list-style-type: none"> i. All necessary measures shall 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. In the event of any such spillage or deposit, immediate steps shall be taken to remove the material from the road surface at the developer's own expense. ii. The developer shall be responsible for the full cost of repair in respect of any damage caused to the adjoining public road arising from the construction work and shall either make good any damage to the satisfaction of Fingal County Council or pay the Council the cost of making good any such damage upon issue of such a requirement by the Council. <p>Reason: To protect the amenities of the area.</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.

Catherine Hanly

Planning Inspector

29th May 2025

13.0 Appendix 1 - Form 1 EIA Pre-Screening

An Bord Pleanála Case Reference	ABP-318987-24		
Proposed Development Summary	Construction of 39 no. residential units and all associated site works.		
Development Address	Palmer Road, Rush, Co. Dublin		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	X	10(b)(i) Construction of more than 500 dwelling units.	Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			
No	X	The proposed development does not equal or exceed the 500 unit threshold	Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			

Yes	X	Class 10(b)(i) construction of more than 500 dwelling units. The development is for 40 no. units.	Preliminary examination required (Form 2)
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5. Has Schedule 7A information been submitted?		
No	X	Pre-screening determination conclusion remains as above (Q1 to Q4)
Yes		Screening Determination required

Inspector: _____ **Date:** _____

14.0 Appendix 2 - Form 2 EIA Preliminary Examination

An Bord Pleanála Case Reference	ABP-318987-24
Proposed Development Summary	Construction of 39 residential units and all associated site works.
Development Address	Palmer Road, Rush, Co. Dublin
<p>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.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
<p>Characteristics of proposed development (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 development involves the construction of 39 no. houses on a 1.3 ha site. The site is located in a residential area.</p> <p>During the construction phase, the proposed development would generate waste during excavation and construction.</p> <p>However, given the moderate size of the proposed development, I do not consider that the level of waste generated would be significant in the local, regional or national context.</p>
Location of development	

<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, 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>The site is not located in or immediately adjacent to any European site.</p> <p>The closest Natura 2000 site is the North West Irish Sea SPA which is 0.8 km away.</p>
<p>Types and characteristics of potential impacts (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>Localised construction impacts will be temporary. The proposed development would not give rise to waste, pollution or nuisances beyond what would normally be deemed acceptable.</p>
<p>Conclusion</p>	
<p>Likelihood of Significant Effects</p>	<p>Conclusion in respect of EIA</p> <p>Yes or No</p>

There is no real likelihood of significant effects on the environment.	EIA is not required.	X
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	
There is a real likelihood of significant effects on the environment.	EIAR required.	

Inspector: _____

Date: _____

DP/ADP: _____

Date: _____

(only where Schedule 7A information or EIAR required)

15.0 Appendix 3 – WFD Impact Assessment Screening

WFD IMPACT ASSESSMENT STAGE 1: SCREENING			
Step 1: Nature of the Project, the Site and Locality			
An Bord Pleanála ref. no.	ABP 318987-24	Townland, address	Palmer Road, Rush, Co. Dublin
Description of project		Construction of 39 no. residential units and all associated site works.	
Brief site description, relevant to WFD Screening,		The site is relatively flat with the exception of a mound of soil along the northern boundary. The site is undeveloped and measures 1.3 ha.	
Proposed surface water details		It is proposed to connect to the 600 diameter drain on Palmer Road.	
Proposed water supply source & available capacity		It is proposed to connect into the existing water supply located on Palmer Road. Uisce Eireann have no objection to the development subject to signing a connection agreement.	

Proposed wastewater treatment system & available capacity, other issues			It is proposed to connect to the 225 mm diameter foul sewer on Palmer Road. The foul water will then be treated at Portrane Wastewater Treatment Plant.			
Others?			N/A			
Step 2: Identification of relevant water bodies and Step 3: S-P-R connection						
Identified water body	Distance to (m)	Water body name(s) (code)	WFD Status	Risk of not achieving WFD Objective e.g.at risk, review, not at risk	Identified pressures on that water body	Pathway linkage to water feature (e.g. surface run-off, drainage, groundwater)
Northwestern Irish Sea	0.9 km	IE_EA_020_000	Good	At Risk	Unknown Impact Type	Surface water drainage will ultimately outfall to the Irish Sea.

Step 4: Detailed description of any component of the development or activity that may cause a risk of not achieving the WFD Objectives having regard to the S-P-R linkage.							
CONSTRUCTION PHASE							
No.	Component	Water body receptor (EPA Code)	Pathway (existing and new)	Potential for impact/ what is the possible impact	Screening Stage Mitigation Measure*	Residual Risk (yes/no) Detail	Determination** to proceed to Stage 2. Is there a risk to the water environment? (if 'screened' in or

							‘uncertain’ proceed to Stage 2.
1.	Surface Water Drain	Northwestern Irish Sea: IE_EA_020_0 000	Existing	Impact on water quality if in the absence of mitigation measures as any silt or pollutants enter into the network.	Mitigation measures will be implemented including surface water drainage features such as detention basins, bio retention areas, permeable paving, infiltration trenches, inception chambers and oil separators.	No	No
2.							
OPERATIONAL PHASE							
3.	Surface Water Drain	Northwestern Irish Sea:	Existing	Impact on water quality if	Mitigation measures will be	No	No

		IE_EA_020_000		in the absence of mitigation measures, any silt or pollutants enter into the network.	implemented including surface water drainage features such as detention basins, bio retention areas, permeable paving, infiltration trenches, inception chambers and oil separators.		
4.							
DECOMMISSIONING PHASE							
5.	N/A						