



An  
Bord  
Pleanála

## Inspector's Report

### ABP-319462-24

#### Development

Revisions to previously permitted development Reg. Ref. F16A/0152, Reg. Ref. F16A/0152/E1A as amended by Reg. Ref F22A/0562, F23A/0530 & F23A/0543. The proposed revisions to the permitted development comprise of the provision of three additional detached 3 bed houses with related modifications to the site layout along with all associated site development works.

#### Location

Lands in the townlands of Ballymacartle and Greenwood, Parish of Kinsaley, North of Ashgrove & Baskin Cottages & Baskin Lane (L2955), Cloghran, Co. Dublin

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

F24A/0029

#### Applicant(s)

Jackie Greene Construction

#### Type of Application

Permission

#### Planning Authority Decision

Refuse Permission

<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Jackie Greene Construction
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	4 <sup>th</sup> July 2024
<b>Inspector</b>	Emma Nevin

## 1.0 Site Location and Description

- 1.1. The appeal site is within Abbey Green, a previously permitted residential scheme, which is located to the north of Basin Lane and the Ashgrove housing estate. The site is also some 0.6km to the west of Abbey House. The overall site is a construction site, with the houses previously permitted nearing completion, the internal roadways and footpaths are also almost complete.
- 1.2. The appeal site is located to the northern portion of the site and relates to a portion of undeveloped land, fronting an end of terrace and a row of detached and semi-detached dwellings. Presently the site is in use as a storage area for material and site vehicles for the ongoing site development works.

## 2.0 Proposed Development

- 2.1. The proposed development encompasses revisions to a previously permitted development under Reg. Ref. F16A/0152/E1, as amended by Reg. Ref. F22A/0562, Reg. Ref. F23A/0530 and Reg. Ref. F23A/0543 comprising three additional detached dwellings.
- 2.2. The proposed works also include modifications to the site layout with associated site development works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. The Planning Authority refused permission on 11<sup>th</sup> March 2024 for the following reasons:

1. *“The proposed development would lead to the loss of open space within the overall permitted ‘Abbey Green’ housing scheme and would furthermore fragment and negatively impact on the quality and utility of the remaining open space and on residential amenity within the overall site. The proposed development would therefore contravene Objective GINH07 of the Fingal County Development Plan 2023-2029, would contravene the ‘RS’ zoning*

*objective and vision, and would be contrary to the proper planning and development of the area.*

2. *The proposed development, by reducing and negatively impacting on the open space within the overall 'Abbey Green' housing scheme site, would be contrary to the permitted open space and landscaping plans and therefore materially contravene Condition 10 attached to the grant of permission under ref. PL06F.247545 and Condition 5 (c) attached to the grant of permission under reg. ref. F23A/0543.*
3. *The proposed development would increase surface water runoff within the overall 'Abbey Green' housing scheme and would reduce the extent of the previously permitted Sustainable Drainage System (SuDS) features within the site. The proposed development would therefore materially contravene Objectives GINHO15 and DMSO203/IUO11 of the Fingal Development Plan 2023 – 2029”.*

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

- 3.2.1. Planning Reports dated 11<sup>th</sup> March 2024 have been provided.
- 3.2.2. This planning application was assessed under the Fingal County Development Plan, 2023 – 2029.
- 3.2.3. The planning report concluded that *“the proposed development would reduce, fragment, and negatively impact the previously permitted open space within the overall 'Abbey Green' estate and would contradict the recently permitted landscaping scheme for the estate. The development would therefore negatively impact on the future residential amenity of the estate. The development would also increase surface water runoff while reducing the extent of previously permitted swales, and as such would be contrary to Development Plan objectives to promote Sustainable Drainage Systems (SuDS) in new housing developments. The proposal is therefore not acceptable”.*
- 3.2.4. As such permission was refused for three reasons as noted in 3.1.1 above.
- 3.2.5. Other Technical Reports:

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

- Water Services: Report received indicating no objection subject to condition(s).
- Transport: Report received indicating no objection.
- Parks: Report received recommending refusal.
- 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: No report received.

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

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

- The proposed development would excessively increase housing density on the estate.
- The additional houses would increase traffic congestion and negatively impact on road safety locally and at the estate entrance.
- Housing would be overpriced.
- Proposed development would reduce green space and infringe on biodiversity.
- A submission has been received from Dublin Airport Authority, which notes the site location in Noise Zone C and states no objection subject to a condition requiring the installation of noise insulation to an appropriate standard.

## 4.0 Planning History

### 4.1.1. Parent Permission:

PL06F.247545/F16A/0152: Planning permission granted on appeal to An Bord Pleanála for 46 no. two storey dwellings, vehicular and pedestrian access from the Ashgrove development, internal roads, footpaths, public open space, landscaping, boundary treatments, street lighting, SUDS drainage, attenuation tanks, piped and other services, ESB substations and all other ancillary site development works necessary to complete the development. The development also provided for the decommissioning of part of an existing 225mm foul sewer and construction of a new 225mm foul sewer connecting the site with the mains drainage network on the Malahide Road (R107).

Condition No. 10 is of relevance, and states:

*“The areas of open space shown on the lodged plans, up to the “RS zoning line”, as indicated on drawing number 300, Rev 9 ‘Landscape Plan’, as submitted on the 19th day of September 2016, shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. All of this work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. When the estate is taken in charge, this open space, up to the RS zoning line (and not as shown on drawing number 2014-94-AI-107) shall be vested in the planning authority, at no cost to the authority, as public open space.*

**Reason:** *In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose”.*

The parent permission was extended under Reg. Ref. F16A/0152/E1, and F16A/0152E1A.

### 4.1.2. Relevant amending permissions:

F23A/0562: Planning permission was granted by Fingal County Council on the 5<sup>th</sup> January 2024 for revisions to previously permitted development Reg. Ref.

F16A/0152, Reg. Ref. F16A/0152/E1A as amended by Reg. ref F22A/0562, to include the replacement of a pair of semi-detached two-storey houses at sites nos.

45 -46 with a pair of semi-detached bungalows together with revised site boundaries and associated changes to the site layout including revisions to the road layout and revisions to boundary of site no 44.

F23A/0543: Planning permission was granted by Fingal County Council on the 15<sup>th</sup> December 2023 for revisions to previously permitted development Reg. Ref F16A/0152, Reg. Ref. F16A/0152/E1A as amended by Reg. Ref. F22A/0562, to include alterations to the rear garden boundaries between houses, and revisions to the site layout consisting of a change in alignment of the northern boundary of the development.

F23A/0530: Planning permission was granted by Fingal County Council on the 26<sup>th</sup> October 2023 for revisions to previously permitted development Reg. Ref. F16A/0152, Reg. Ref. F16A/0152/E1A as amended by Reg. Ref. F22A/0562, to include the replacement of 02 no. Type A 4 - bed units at sites numbers no. 26 and 27 with 04 no. Type C 3 - bed units, resulting in an increase of 02 no. units along with all associated site development works.

F23A/0036: Planning permission was granted by Fingal County Council on the 30<sup>th</sup> March 2023 for revisions to the permitted development comprising alterations to the garden boundaries of unit no.44, revisions to the site layout consisting of a change in location for units nos. 45 and 46 and associated revisions to roads and open space and revised detached house types for units 45 and 46.

F22A/0562: Planning permission was granted by Fingal County Council on the 6<sup>th</sup> December 2022 for revision to previously permitted development Reg. Ref. F16A/0152 and Reg. Ref. F16A/0152/E1A to include alterations to permitted House Type C. (15 no. units) resulting in a change from two to three bedroom units, amendments to the floor plans resulting in an increase in floor area, associated revisions to the elevations and all associated site developments works.

## **5.0 Policy Context**

### **5.1. Development Plan**

- 5.1.1. Under the Fingal County Development Plan 2023 – 2029, the subject site is zoned “RS” - Residential, with a stated objective “*to provide for residential development and*

*protect and improve residential amenity”, the northern part of the overall lands are zoned ‘GB’ – Green Belt, with a stated objective “to protect and provide for a Greenbelt”.*

5.1.2. The site is located within Noise Zone C associated with Dublin Airport.

5.1.3. The site is within landscape character – low lying agriculture.

5.1.4. 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

## 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:

- Malahide Estuary SAC (Site code: 000205) is located approximately 3km to the south.
- Malahide Estuary SPA (Site code: 004025) is located approximately 3km to the south.

- Baldoyle Bay SAC (Site code: 000199) is located approximately 3.5km to the northwest.
- Baldoyle Bay SPA (Site code: 004016) is located approximately 3.5km to the northwest.

## **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 modifications to a permitted housing development to include 3 no. dwellings 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**

A first party appeal has been received, from McGill Planning on behalf of the applicant Jackie Green Construction, to the decision by Fingal County Council to refuse permission.

- 6.1.1. The grounds of appeal are summarised below:
- The proposed houses are on residentially zoned and serviced land development site that is currently under construction.
  - The proposal would make best use of available land in line with National, Regional and Local Plan policies.

- The quantum of permitted formal public open space, measuring 2485 square meters or 12% of the net site area, would not change because of this proposed development.
- The location of the houses is on a linear strip of land that was not considered by the council to be usable or high quality in the original permit permission.
- Each individual area of open space are large attractive areas and can operate independently. However, these spaces are linked by the green belt to the north of the site.
- The wire mesh boundary of the site, as permitted, encompasses areas which are used for swales and detention basins and are landscaped as wild meadow flower areas.
- These areas fall within the Greenbelt zoned areas and are accessible to the public, which were previously not counted by Fingal County Council as public open space due to the SuDS and drainage measure provided within however in line with the Sustainable and Compact Settlement Guidelines this area should be considered public open space given its accessible nature.
- The statement that the proposed development materially contravenes condition 10 and condition 5 is incorrect unreasonable and it's contrary to the provisions of the planning and development act and the planning development regulations.
- The only legal basis for the use of the term material contravention is in the context of a Development Plan or Local Area Plan and there are seeing it and objectives. It cannot be applied to conditions. Conditions are regularly amended via planning applications and as such the alterations to a condition cannot be considered a material contravention.
- The Office of the Planning Regulator's Guide to the Planning Process explains what a material contravention is and there is absolutely no reference to 'materially contravening a condition.'
- This reason for refusal is therefore considered incorrect and cannot be considered to represent a material contravention of condition 10 or condition 5 (c) as outlined as these are not part of the Development Plan. The proposed 3

houses and associated private open space are located fully within the residential zoning the proposal is fully compliant with the zoning of the land and there is no requirement under the Fingal County Development Plan preventing the application to develop housing at this location.

- Each planning application is considered on its own merits and cannot be restricted by virtue of the condition from previous planning application over 8 years old.
- Given there is no material contravention of development planner any local area plan and the historic amendment of conditions on this site the other planning applications it is requested that the reason for refusal No. 2 is dismissed.
- Reason for refusal no. 3 is incorrect and unreasonable, as the proposed development does not represent a material contravention of Objectives GINH015and DMSO203/IUO11.
- The report received by the Water Services Planning Section stated no objection subject to conditions. It is disappointing that the Council Planning Section decided to ignore and set aside the recommendations of the Water Services Planning Section and refuse permission on this basis.
- In line with the appendices to the Sustainable and Compact Settlement Guidelines the detention basins and swales throughout the scheme have been integrated into the public open space and by considered as open space along with the Sustainable and Compact Settlement Guidelines.
- The argument by the Council appears to conflict with a counterintuitive to items 1 and 2 in their reasons for refusal. Items 1 and 2 recommend refusal due to the loss of public open space and fragmentation of sale this is despite the acknowledged that the area where the houses are proposed resulted in location of permitted swales where they are contrary to the aforementioned objectives the site layout plan submitted as part of the application clearly indicates the detention basins being outside of the primary public open space area on lands that are used as wild flower meadow.

## 6.2. Planning Authority Response

6.2.1. A response was received from the planning authority dated 25<sup>th</sup> April 2024. The submission responds to the first-party appeal as follows:

- The application was assessed against the policies and objectives of the Fingal Development Plan 2023 – 2029 and the existing national policy and guidelines and having regard to the development plan zoning objective.
- The Planning Authority considered that the proposed houses would reduce, fragment, and negatively impact on the previously permitted open space with the overall Abbey Green estate. The Planning Authority had particular regard to the recent grant of permission under reg. ref. F23A/0543, which permitted an updated landscaping plan for the development.
- The Planning Authority considers that the proposed extra houses would unnecessarily reduce the green space and biodiversity areas granted under this previous permission. The proposed houses would also reduce the extent of swales previously permitted within the estate.
- Concerns set out in third-party objections were acknowledged and considered. The Planning Authority concurred with concerns raised over the reduction in green space in the development.
- As the proposed development would be contrary to the landscaping schemes and surface water mitigation approved under previous grants of permission, it was considered to contravene Condition 10 attached to ref. PL06F.247545 and Condition 5 (c) of ref. F23A/0543 (as per Schedule Four (s.11) of the Planning and Development Act, as amended).
- The planning authority conclude that An Bord Pleanála are requested to uphold the decision of the Planning Authority, and requests that in the event the appeal is successful, conditions requiring financial contributions and/or Bonds in accordance with Section 48 Development Contribution Scheme are included.

### 6.3. **Observations**

None received.

### 6.4. **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 Zoning Objective
- II. Open Space – including Condition 10 of Reg Ref. PL06F.247545 and Condition 5 (c) of Reg. Ref. F23A/0543
- III. Material Contravention
- IV. Appropriate Assessment, and
- V. Other Matters.

### 7.2. **Compliance with Zoning Objective**

- 7.2.1. 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 residential with an objective to protect and improve residential amenity. Residential development is permitted in principle under this zoning objective. The Planning Authority considers that the proposed loss of open space would contravene the existing permitted scheme and as a result would be contrary to the aim of the residential zoning objective.
- 7.2.2. However, given that the site is located within an area of land that is zoned for residential development, I consider that the principle of residential development to be acceptable on this site, subject to assessment against normal planning considerations. These matters are discussed in turn below.

**7.3. Open Space – including Condition 10 of PL06F.247545/Reg. Ref. F16A/0152 and Condition 5 (c) of Reg. Ref. F23A/0543**

- 7.3.1. Reason for refusal 1 states that the proposed development would lead to the loss of open space within the overall scheme and would fragment and negatively impact on the quality and utility of the remaining open space and cites Objective GINHO7 of the Fingal Development Plan.
- 7.3.2. The appellant states that the formal permitted public open space will remain unchanged and will provide 2,854 sq. m/ 12% of the net site area. In addition, and in line with the Sustainable and Compact Guidelines the areas of wildflower meadow planting proposed around the permitted detention basins and swales (as per the development permitted under Ref: F23A/0036) located to the northeast of the open space and to the west of the proposed dwellings, should be considered public open space given their accessible nature. If this area is included this will provide a total of 6,264 sq. m. of open space.
- 7.3.3. The appellant further states that the proposal would make the best use of available land and that the location of the houses is on a linear strip of land that was not considered by the Council to be 'useable' or 'of high quality' in the original permission.
- 7.3.4. Following site inspection and my review of the submitted plans, appeal documentation and the planning history of the site, I consider that the proposed 'open space area', as per the approved plans totalled an area of 2,854 sq. m. and pertained to the existing open space area located to the eastern portion of the site, as per the approved landscaping plans. The area of land subject to the appeal was previously an ancillary landscaped area with tree planting and does not encroach on the permitted open space area as noted above. There is a further portion of land, which was also an ancillary landscaped area under the permitted scheme, located further to the west of the proposed dwellings which will be retained as landscaped area.
- 7.3.5. While I acknowledge that the lands subject to this appeal, formed part of a landscaped area with tree planting, I do not concur with the planner's assertion that the proposed development would lead to the loss of open space and would negatively impact on and reduce the amenity space available with the existing residential scheme. At my time of site inspection, I noted the extent, quality and

location of the open space area to the eastern and northeastern portion of the site, which is accessible via the internal road and footpath network from the existing dwellings. I also consider that the portion of land to the west of the proposed dwellings, to the north of the constructed dwelling Nos. 36-46, will provide for an additional area of ancillary open space to serve the development. Notwithstanding, these dwellings can also access the public open space area to the east.

- 7.3.6. In respect to the landscaping and planting previously proposed at this location, I noted that the land to the north of the proposed dwellings which lies outside the residential zoning objective will be managed as meadow and will adjoin a natural regeneration area. The previously proposed tree planting to the east and west boundaries of the application site appears to be as permitted. As such, I do not consider that the loss of planting in the location of the instant application boundary would detract from the amenity value of the overall scheme.
- 7.3.7. Therefore, I consider that adequate open space will be provided to serve the development, including the additional three dwellings proposed as part of this instant appeal. The location of the proposed dwellings does not detract from the open space arrangement and each proposed dwelling is also served by adequate private open space, in form of side and rear gardens.
- 7.3.8. Reason for refusal 2 also states that the proposed development would reduce and negatively impact on the open space within the overall scheme and as a result would be contrary to Condition 10 of PL06F.247545/Reg. Ref. F16A/0152 and Condition 5 (c) of Reg. Ref. F23A/0543.
- 7.3.9. The issues pertaining to the reduction and loss of open space within the scheme have been addressed above.
- 7.3.10. Condition 10 of PL06F.247545/Reg. Ref. F16A/0152 reads as follows:

*The areas of open space shown on the lodged plans, up to the “RS zoning line”, as indicated on drawing number 300, Rev 9 ‘Landscape Plan’, as submitted on the 19th day of September 2016, shall be reserved for such use and shall be levelled, contoured, soiled, seeded, and landscaped in accordance with the detailed requirements of the planning authority. All of this work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. When the*



*estate is taken in charge, this open space, up to the RS zoning line (and not as shown on drawing number 2014-94-AI-107) shall be vested in the planning authority, at no cost to the authority, as public open space.*

**Reason:** *In order to ensure the satisfactory development of the public open space areas, and their continued use for this purpose*

7.3.11. Condition 5 (c) of Reg. Ref. F23A/0543 reads as follows:

*“The areas of open space shown on the plans submitted to the Planning Authority on 13<sup>th</sup> September 2023, shall be reserved for such use and shall be levelled, contoured, soiled, seeded and landscaped in accordance with the approved plans. All of this work shall be completed before any of the dwellings are made available for occupation and shall be maintained as public open space by the developer until taken in charge by the local authority. When the estate is taken in charge, this open space, shall be vested in the planning authority, at no cost to the authority, as public open space. The lands to the north of the RS zoning land within the red line of the application site shall be maintained as a responsibility of the owner/developer of said lands.*

*Reason: To ensure the provision of amenity afforded by appropriate landscape design and open space”.*

7.3.12. Planning Reg. Ref. PL06F.247545/F16A/0152 is the parent planning permission pertaining to the development of 46 dwelling house and includes the appeal site. The land upon which the three dwellings are proposed under the subject appeal, formed part of a proposed landscaped area, which was ancillary open space. This parcel of land has not been developed for residential development.

7.3.13. The proposed development description, as set out in the public notices, refers, inter alia, to “Revisions to previously permitted development Reg. Ref. F16A/0152, Reg. Ref. F16A/0152/E1A as amended by Reg. Ref F22A/0562, F23A/0530 & F23A/0543. The proposed revisions to the permitted development comprise of the provision of three additional detached 3 bed houses with related modifications to the site layout along with all associated site development works”. There is no specific reference in the development description to Condition No. 10 or Condition No. 5 (c).

- 7.3.14. The Planning Authority as per reason for refusal 2, consider that the implementation of the development would contravene materially Condition 10 attached to the grant of permission under Reg. Ref. PL06F.247545/F16A/0152 and Condition 5 (c) attached to the grant of permission under Reg. Ref. F23A/0543.
- 7.3.15. The appellant submits that the claim that the proposed development materially contravenes a condition is incorrect and unreasonable and the only legal basis of the term material contravention is in the context of the Development Plan or a Local Area Plan and their associated objectives. Conditions can be and are regularly amended via planning applications and there is a historic amendment of conditions on this site via other planning applications.
- 7.3.16. Notwithstanding the above, the matter of the previously applied conditions, in my view, does not have a fundamental bearing on the overall assessment of the planning application.

#### **7.4. Material Contravention**

- 7.4.1. A matter is raised in the Planning Authority's decision to refuse permission which relates to material contravention. Having considered the proposed development and the relevant provisions of the Fingal County Development Plan 2023-2029, in my opinion the Board should not consider itself restrained by section 37(2), having regard to the analysis set out.
- 7.4.2. Reason for refusal 1 states that the proposed development would materially contravene Objective GINHO7 of the Development Plan with regard to open space. Reason for refusal 3 states that the proposed development would increase surface water runoff within the overall housing scheme and would therefore materially contravene Objectives GINHO15 and DMSO203/IUO11 of the Development Plan.
- 7.4.3. Having examined the plans and particulars submitted including the details within the appeal statement in the context of Objective GINH07 and Objectives GINHO15, DMSO203 and IUO11, I have concluded that the proposed development does not constitute a material contravention for the following reasons:
- Objective GINHO7 requires that developments provide a range of open spaces and recreational facilities accommodating a wide variety of uses.
- Having regard to the assessment in Section 7.3 above, I am satisfied that the

proposed development does not negatively impact on the existing public open space to serve the proposed development and that adequate open space is provided to serve the development and as such the development does not materially contravene Objective GINHO7 of the County Development Plan.

- Objectives GINHO15 and DMSO203 and IUO11 all pertain to surface water drainage proposals for new developments and provide specific guidance in relation to surface water drainage proposals. While I note the location of the proposed dwellings, i.e. within an area previously proposed to include swales, I am satisfied that the location of dwellings in this portion of land would not increase surface water runoff within the scheme, nor significantly reduce the extent of previously permitted SuDS features within the site. I also reference the report received from the Drainage Department, which indicates no objection to the proposed development. The Drainage Department references that the applicant shall by way of compliance condition detail that the existing surface water network has adequate capacity to serve the additional three dwellings. I consider that in the event that the Board recommend that permission be granted that a condition be attached in relation to the surface water drainage proposals for the proposed three dwellings. As such, the development does not materially contravene Objectives GINHO15 and DMSO203 and IUO11 of the County Development Plan.

7.4.4. I wish to further highlight that having regard to Section 37 (2) of the Planning and Development Act 2000 (as amended), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the Planning Authority to whose decision the appeal relates, having assessed the proposal in accordance with the following criteria:

- i. the proposed development is of strategic or national importance:

The development of 3 houses is not considered to be of strategic or national importance.

- ii. there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned:

There are no conflicting objectives in the development plan and the objectives are clearly stated, insofar as the proposed development is concerned.

iii. permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or...;

The proposal, located on lands that are zoned 'RS' Residential is consistent with Section 28 Guidelines, most notably Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024) which expand on the high-level strategy of the NPF and set out detailed growth criteria to support the development of sustainable and compact settlements.

iv. permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

The development is consistent with the pattern of development granted on the immediate area of this site, including the amending permissions granted following the adoption and implementation of the County Development Plan.

7.4.5. If the Board consider that the proposed development would materially contravene the plan, the proposed development may be considered under S.37(2)(ii)(iii).

## **7.5. Appropriate Assessment**

7.5.1. I have considered the [title of project] in light of the requirements S177U of the Planning and Development Act 2000 as amended.

7.5.2. The subject site is located at a distance from the following European Site(s):

- Malahide Estuary SAC (Site code: 000205) is located approximately 3km to the south.
- Malahide Estuary SPA (Site code: 004025) is located approximately 3km to the south.
- Baldoyle Bay SAC (Site code: 000199) is located approximately 3.5km to the northwest.

- Baldoyle Bay SPA (Site code: 004016) is located approximately 3.5km to the northwest.

7.5.3. The proposed development comprises revisions to a previously permitted development under Reg. Ref. F16A/0152/E1, as amended by Reg. Ref. F22A/0562, Reg. Ref. F23A/0530 and Reg. Ref. F23A/0543 comprising three additional detached dwellings.

7.5.4. 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 appreciable effect on a European Site. The reason for this conclusion is as follows:

- The nature of works.
- The location from nearest the European site and lack of connections to same.
- Taking into account screening determination by LPA.

7.5.5. I consider that the proposed development would not be likely to have a significant effect individually, or in-combination with other plans and projects, on a European Site and appropriate assessment is therefore not required.

## 7.6. Other Matters

### 7.6.1. Design, Form and Layout

While not specifically raised in the planning authority reason for refusal or appeal submission. I note that the scale, form, and design of the proposed dwellings is acceptable. There is a mix of house types within the Abbey Green residential development, and the layout and form of the proposed detached dwellings to this parcel of land is considered acceptable and will not impact on the visual or residential amenity of adjoining sites.

In respect to car parking and access, each dwelling will be served by two car parking spaces. I recommend the inclusion of a condition in respect to electric charging points to the parking spaces. The overall internal road layout is consistent with that provided under the parent permission and is satisfactory.

### 7.6.2. Conditions

Notwithstanding the above assessment, including the inclusion of a specific condition in respect of surface water drainage proposals to be agreed prior to commencement of development, I recommend that permission be granted subject to standard conditions.

## 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 'RS' 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 development in terms of scale, form and layout, would not seriously injure the amenities of the previously permitted development, in particular the open space provision and would be acceptable in terms of drainage arrangements, parking, 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.	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 19 <sup>th</sup> day of January 2024, 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.
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	Reason: In the interest of clarity.
2.	<p>Apart from any departures specifically authorised by this permission, the development shall comply with the conditions of the parent permission [Reg. Ref. under Reg. Ref. F16A/0152/E1, as amended by Reg. Ref. F22A/0562, Reg. Ref. F23A/0530 and Reg. Ref. F23A/0543] unless the conditions set out hereunder specify otherwise. This permission shall expire on 12<sup>th</sup> August 2027.</p> <p>Reason: In the interest of clarity and to ensure that the overall development is carried out in accordance with the previous permission(s)</p>
3.	<p>Each dwelling hereby permitted shall be occupied as a single residential unit and shall not be used, sold, let or otherwise transferred or conveyed, save as part of the dwelling.</p> <p><b>Reason:</b> To restrict the use of the extension in the interest of residential amenity</p>
4.	<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>
5.	<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>
6.	<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</p>

	<p>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>
7.	<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>
8.	<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>
9.	<p>Water supply and drainage arrangements shall comply with the requirements of the planning authority for such works and services as follows:</p> <ul style="list-style-type: none"> <li>(i) The developer shall demonstrate to satisfaction of the local authority, adequate capacity of the existing surface water network into which the proposed three additional dwellings are to discharge, in particular SUDS elements such as treatment-, interception and attenuation storage volumes.</li> <li>(ii) No surface water / rainwater is to discharge into the foul water system under any circumstances.</li> <li>(iii) The surface water drainage must be in compliance with the Greater Dublin Regional Code of Practice for Drainage Works, Version 6.0, FCC, April 2006.</li> </ul> <p>Details shall be submitted to and agreed in writing by the planning authority prior to the commencement of development.</p>



	Reason: In the interest of proper site drainage.
10.	<p>Each dwelling house hereby permitted shall be provided with noise insulation to an appropriate standard, having regard to the location of the site within Noise Zone C associated with Dublin Airport.</p> <p>Reason: In the interest of proper planning and sustainable development and residential amenity.</p>
11.	<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>

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

26<sup>th</sup> August 2024

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	319462			
<b>Proposed Development Summary</b>	Revisions to previously permitted development Reg. Ref. F16A/0152, Reg. Ref. F16A/0152/E1A as amended by Reg. Ref F22A/0562, F23A/0530 & F23A/0543. The proposed revisions to the permitted development comprise of the provision of three additional detached 3 bed houses with related modifications to the site layout along with all associated site development works.			
<b>Development Address</b>	Lands in the townlands of Ballymacartle and Greenwood, Parish of Kinsaley, North of Ashgrove & Baskin Cottages & Baskin Lane (L2955), Cloghran, 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

<b>An Bord Pleanála Case Reference</b>	<b>ABP- 319462</b>	
<b>Proposed Development Summary</b>	Revisions to previously permitted development Reg. Ref. F16A/0152, Reg. Ref. F16A/0152/E1A as amended by Reg. Ref F22A/0562, F23A/0530 & F23A/0543. The proposed revisions to the permitted development comprise of the provision of three additional detached 3 bed houses with related modifications to the site layout along with all associated site development works.	
<b>Development Address</b>	Lands in the townlands of Ballymacartle and Greenwood, Parish of Kinsaley, North of Ashgrove & Baskin Cottages & Baskin Lane (L2955), Cloghran, Co. Dublin	
<p><b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development.</b> 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 3 no residential units on residential 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
<b>Size of the Development</b>	Site measuring 0.0363 ha. with a proposed floor area of 240 sq. m. However, this is not	

<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>considered exceptional in the context of the existing urban environment.</p> <p>The site was an active construction site at time of site inspection, with the dwellings previously permitted under construction and near completion. However, there are no significant cumulative considerations in this regard.</p>	
<p><b>Location of the Development</b></p> <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, or protected species?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?</p>	<p>The subject site is located at a distance from the following European Site(s):</p> <ul style="list-style-type: none"> <li>• Malahide Estuary SAC (Site code: 000205) is located approximately 3km to the south.</li> <li>• Malahide Estuary SPA (Site code: 004025) is located approximately 3km to the south.</li> <li>• Baldoyle Bay SAC (Site code: 000199) is located approximately 3.5km to the northwest.</li> <li>• Baldoyle Bay SPA (Site code: 004016) is located approximately 3.5km to the northwest</li> </ul> <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>	

### Conclusion

There is no real likelihood of significant effects on the environment.

EIA is not required.

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



**Date:** 26<sup>th</sup> August 2024

**DP/ADP:** \_\_\_\_\_  
(only where Schedule 7A information or EIAR required)

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