

An
Bord
Pleanála

Inspector's Report ABP319665-24

Development

Retention permission is sought for (i) 1 no. viewing pod situated within the rear garden and (ii) all associated site works, including boundary treatments and landscaping necessary to facilitate the development. The viewing pod has replaced a pre-existing garden room.

Location

Cliff Haven, Thormanby Road, Howth.

Planning Authority

Fingal County Council.

Planning Authority Reg. Ref.

F24A/0120.

Applicant(s)

Patrick O'Sullivan.

Type of Application

Retention.

Planning Authority Decision

Refuse retention.

Type of Appeal

First Party

Appellant(s)

Patrick O'Sullivan.

Observer(s)

One Observer

(1) Jacqueline Feely (for Hillwatch).

Date of Site Inspection

25/09/2024

Inspector

Anthony Abbott King.

1.0 Site Location and Description

- 1.1. The applicant site accommodates a large detached residence, known as Cliff Haven, on the south side of Thormanby Road proximate to the coast in the vicinity of the Bailey lighthouse. The house is positioned within a sylvan setting.
- 1.2. The pattern of development in the area is characterised by large multi-storey detached dwelling houses on substantial sites. The adjoining houses at "Glenlion" and "Brackan Hill" are located to the east and west, respectively. The houses on the southside of Tormanby Road are screened from the public carriageway by high boundary walls and entrance gates.
- 1.3. The subject development to be retained is a viewing pod part subterranean located to the rear of the main dwelling house in the sloping grounds of Cliff Haven. The grounds of Cliff Haven descend south toward the coast.
- 1.4. The applicant site enjoys panoramic views to the south over the Irish Sea.
- 1.5. The south Howth coast is characterised by a steep cliff face. The grounds of Cliff Haven extends to the Howth Coastal walk, which divides the grounds of the houses on the south side of Tormanaby Road from the cliff face and shoreline.
- 1.6. The Howth Coastal walk is a public right of way with an access point off Tormanaby Road to the east of Cliff Haven between the curtilages of "Danes Hollow" and "Deepwater".
- 1.7. The site area is given as 0.0472 hectares.

2.0 Proposed Development

- 2.1. The proposed development comprises the retention of the following:
 - (i) 1 no. viewing pod situated within the rear garden and;
 - (ii) (ii) all associated site works, including boundary treatments and landscaping necessary to facilitate the development. The viewing pod has replaced a pre-existing garden room.

3.0 Planning Authority Decision

3.1. Decision

Refuse retention permission for the following 5 reasons:

- (1) The viewing pod proposed for retention is located within lands zoned HA-High Amenity and by virtue of amendments to land levels has resulted in a significant intervention into the protected landscape of exceptional value and high sensitivity. The viewing pod proposed for retention has also resulted in the removal of maritime heathland which is characteristic of the landscape type in Howth. The development proposed for retention would therefore materially contravene Policy GINHP28 and Objective GINHO67 of the Development Plan which require protection of High Amenity areas from inappropriate development and would accordingly be contrary to the proper planning and sustainable development of the area.*
- (2) The proposed retention of the pod by virtue of the level of excavation undertaken, amendments to land levels, earthworks subsequently carried out for maintenance purposes, and the level of re-landscaping required has resulted and would result in serious injury to the visual amenities of this high amenity landscape of outstanding scenic value and be out of character within the Howth SAAO. The proposed development would not comply with the objective for 'Other Areas' within the SAAO to preserve the beauty and distinctive natural character of the area.*
- (3) The construction, retention, and continued maintenance of the pod has resulted in the removal of a significant section of protected maritime heathland. As such the proposed development contravenes Objective 2.4 and Policy 2.4.1 of the Howth SAAO which require the protection, preservation, and retention of this habitat.*
- (4) The pod proposed for retention has resulted in the construction of a significant structure within a high amenity area of outstanding natural beauty, exceptional landscape value and high sensitivity and through land level amendments,*

subsequent works for maintenance purposes, and the nature of the structure has resulted in the introduction of a significant unnatural man-made structure into a landscape with a distinctive character. Having regard to the location of the site and of similar lands in the vicinity, it is considered that the development, if permitted for retention would result in an unacceptable precedent in terms of undermining of the High Amenity zoning objective and the SAAO and the protections afforded to high value landscapes in the vicinity as a consequence.

(5) Having regard to the information and Appropriate Assessment Screening Report provided with the application, the Planning Authority considers that the applicant has failed to demonstrate that the construction of the viewing pod did not and would not have a significant effect on the Howth Head Special Area of Conservation, and consequently the applicant has failed to provide sufficient information for the Planning Authority to make a screening determination for Appropriate Assessment.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Decision of the CEO of Fingal County Council reflects the recommendation of the planning case officer.

3.2.2. Other Technical Reports

- The parks section of the planning authority recommends refusal (noted in the local authority planning assessment).

4.0 Planning History

There is an extensive planning history on the site. The relevant recent planning history is as follows:

- Under Register Ref: No. F18A/0145 retention permission and planning permission was sought for alterations to previously approved development (Reg. ref. F16A/0225). Retention permission was sought for alterations to

fenestration, extension to basement level, demolition of car port and retention and completion of partly subterranean viewing pod in rear garden. Planning permission was sought for works including to the front of the subject dwelling to accommodate level access at ground floor, reconfiguration of the driveway, internal alterations and construction of replacement carport

A split decision was recorded. The planning authority refused planning permission for the viewing pod, associated amendments to land levels and specific (main dwelling house) fenestration.

Schedule 2 lists the 5 reasons for refusal. The first 4 reasons for refusal are relevant to the assessment of the subject viewing pod. The relevant reasons for refusal are extracted below:

- 1. The viewing pod proposed for retention is located within lands zoned HA-High Amenity and by virtue of amendments to existing land levels has resulted in a significant intervention into the protected landscape of exceptional value and high sensitivity as defined in Table LC01 of the Fingal Development Plan 2017-2023. The viewing pod proposed for retention has also resulted in the removal of maritime heathland which is characteristic of the landscape type in Howth. The development proposed for retention would therefore materially contravene Objective NH36 of the Development Plan which states development shall not be permitted if it causes unacceptable visual harm; introduces incongruous landscape elements; or causes the disturbance of loss of (iii) vegetation which is characteristic of that landscape (iv) the visual condition of landscape elements and furthermore would materially contravene Objectives NH51 and NH52 which require protection of High Amenity areas from inappropriate development and, accordingly, would be contrary to the proper planning and sustainable development of the area.*
- 2. The proposed retention of the pod by virtue of the level of excavation undertaken, amendments to existing land levels and level of re-landscaping required would result in serious injury to the visual amenities of this high amenity landscape of outstanding scenic value and be out of character within*

the Howth SAAO. The proposed development would not comply with the objective for 'Other Areas' within the SAAO to preserve the beauty and distinctive natural character of the area and as such would materially contravene Objective NH44 of the 2017-2023 Fingal Development Plan which requires protection and enhancement of the SAAO.

- 3. The construction and retention of the pod has resulted in the removal of a significant section of protected maritime heathland. As such the proposed development contravenes Objective 2.4 and Policy 2.4.1 of the Howth SAAO which require the protection, preservation, and retention of this habitat and as a consequence would materially contravene Objective NH44 of the 2017-2023 Fingal Development Plan which requires protection and enhancement of the SAAO..*
- 4. The pod proposed for retention has resulted in the construction of a significant structure within a high amenity area of outstanding natural beauty, exceptional landscape value and high sensitivity and through land level amendments, subsequent works for maintenance purposes, and the nature of the structure has resulted in the introduction of a significant unnatural man-made structure into a landscape with a distinctive character. Having regard to the location of the site and of similar lands in the vicinity, it is considered that the development, if permitted for retention would result in an unacceptable precedent in terms of undermining of the High Amenity zoning objective and the SAAO and the protections afforded to high value landscapes in the vicinity as a consequence.*

5.0 Policy and Context

5.1. Development Plan

The Fingal Development Plan 2023-2029 is the local planning policy document. I have set out below relevant development plan policies and objectives for the information of the Board.

Zoning

The relevant land-use zoning objective is 'HA' (High Amenity) - (Sheet 10 – Baldoyle / Howth): *Protect and enhance high amenity areas.*

It is noted that the northern part of the site accommodating the main dwelling house is zoned 'RS': *Provide for residential development and protect and improve residential amenity.*

Chapter 13 (Land use Zoning) states that the vision for zoning objective 'HA' is to protect these highly sensitive and scenic locations from inappropriate development and reinforce their character, distinctiveness and sense of place. In recognition of the amenity potential of these areas opportunities to increase public access will be explored.

Residential use is permitted in principle.

Special Objectives and Designations

The subject site is within the Howth SAAO (Special Amenity Area Order 1999) an area of 547 hectares.

The following *inter alia* provisions of the Howth SAAO are relevant and state:

Objective 1.1: *To manage the area in order to:*

- *Conserve its natural and cultural assets*
- *Realise its exceptional potential as a place for informal recreation, tourism and environmental education.....*

Objective 2.1: *To preserve views from public footpaths and roads.*

Objective 2.4: *To preserve existing areas of heathland and maritime grass land.*

Policy 2.4.1: *Development which would reduce existing areas of heathland and maritime grassland will not be permitted except for reasons of over-riding public interest.....*

Schedule 2, Part 2 (Other Areas), Policy 3.4.2:

Design guidelines apply to new development.....

(Buildings) An extension to an existing building should generally match the character of the existing structure. New buildings should be as inconspicuous as possible. This effect may be achieved by using a combination of appropriate elevational treatments, using suitable materials and colours and by sensitive planting. Substantial engineering to reconfigure the profile of a landform is not an acceptable form of mitigation.....

Views and Prospects

Zoning Map 10 (Baldoyle / Howth) includes objectives including the designation of the public footpath to the south of the site a 'Coastal Walk' and the designation of 'Preserve Views' along the extent of the walk.

Landscape Designation

Sheet 14 (Green Infrastructure) the site is within a landscape character area defined as coastal.

Relevant development plan policy and objectives

Chapter 9 (Green Infrastructure & Natural Heritage) the following *inter alia* are relevant and state:

GINHP28: *Protect High Amenity areas from inappropriate development and reinforce their character, distinctiveness and sense of place.*

GINHO58: *Resists development such as houses, forestry, masts, extractive operations. Landfills, caravan parks, and campsites, and large agricultural /*

horticulture units which would interfere with the character of highly sensitive areas or with view or prospect of special amenity value, which it is necessary to preserve.

GINHO67: Ensure that development reflects and reinforces the distinctiveness and sense of place of High Amenity areas, including the retention of important features or characteristics, taking into account the various elements which contribute to its distinctiveness such as geology and landform, habitats, scenic quality, settlement pattern, historic heritage, local vernacular heritage, land-use and tranquillity.

5.2. EIA Screening

5.3. The proposed development is not within a class where EIA would apply.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal prepared by Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, on behalf of the appellant are summarised below:

- The appeal statement sets out the planning rationale and justification for the development *inter alia* providing an assessment of development to be retained against the relevant provisions of the Fingal County Development Plan 2023-2029, including land-use zoning, Objectives GINHP28, GINHO60, GINHO58 & GINHO67, the Howth SAAO, (citing Objective 2.1 and Policy 2.1.1) and objectives preserving views and prospects.
- It is claimed that the viewing pod by reason of its location 'embedded' within the natural gradient of the site (aerial photographs illustrating evolution of footprint 2018-2022 are included in the appeal statement), the separation distance between the pod and the Howth Coastal walk and the minimal visibility of the existing site from publicly accessible lands with the 'HA' (High Amenity) zoning objective does not compromise the objectives of the Fingal County Development Plan 2023-2029 in respect of high amenity.

- It is claimed that the viewing pod has been sensitively designed, embedded in the landscape (bunker format part subterranean and part covered in vegetation to reduce physicality) and with a limited function. The pod allows the property owner to enjoy a tranquil place to enjoy the immediate landscape and views towards and across the Irish Coast consistent with policy objectives GINHP28 & GINHO67 of the Fingal County Development Plan 2023-2029.
- It is claimed that the pod structure does not give rise to any significant negative impacts on the surrounding residential amenity of the area or to adjoining residents.
- In the matter of the Howth SAAO, including Objective 2.1, Policy 2.1.1 & Policy 3.1.2 it is claimed that the site of the pod comprises heathland and maritime grassland. The pod has been appropriately integrated (embedded) into the landscape in such a manner that the sensitive receiving environment (maritime heathland) has been entirely restored.
- Furthermore, the appellant states that the structure is subordinate in visual terms to both the main dwelling house and the surrounding natural environment with specific mitigation measures including contemporary architectural design and appropriate planting.
- In the matter of views and prospects, the appeal statement notes that the development plan recognises the need to protect and conserve views and prospects adjoining public roads throughout the County. However, the development plan also recognises that in assessing views and prospects it is not proposed that that this should give rise to a prohibition on development rather development where permitted should not hinder or obstruct these views.
- The development is consistent with Objective GINHO60 (protect views and prospects) and GINHO58 (resist specific forms of development), as it does not represent a prohibited development type and in scale has appropriately considered the need to limit development within lands zoned 'HA'.
- It is claimed that the viewing pod is not visible from the public realm due to the topography of the site and the boundary treatments. The development has no impact on the visual amenity of the streetscape (Thormanby Road /

Carrickbrack Road) and would not compromise any existing views toward the coast, as demonstrated in the photomontages prepared by Arch FX.

- It is evident that the pod would not be visible from the Cliff path (Howth Coastal walk) to the south due to the generous separation distance adopted and the boundary treatments. It is also noted that primary views along the walkway are generally focused towards the coast rather than northwards toward the subject development site.
- The appellant strongly refutes the planning authority opinion that the viewing pod would create a new undesirable precedent. It is claimed the development would not set an unacceptable precedent as it comprises the simple replacement of a pre-existing structure. It is claimed the viewing pod is not a new structure but a structure that replaced a pre-existing structure on site.
- It is argued that removing the 'embedded' pod now would end up resulting in the loss of this protected maritime heathland. It is claimed a retention permission leaving the pod in place is in the best interest of protection of the protected maritime heathland.
- The appellant clarifies that a legacy development comprising a pre-existing structure was constructed of timber, windows and a felt roof. The approximate size was 9m by 4m with an eaves height of 2.4m and ridge of 2.8m. It is claimed that this structure had a water closet, running water and electricity.
- The structure was removed in the early 2000s following storm damage and the concrete base was retained and covered in Astroturf. The appeal statement contains aerial photographs at specified dates annotated to illustrate the location of the pre-existing structure / base.
- The appeal statement considers it prudent to note that the subject structure is visible on the currently applicable zoning map (development plan 2023-2029) whilst the zoning maps contained within the previous two Fingal County Development Plans each illustrated the pre-existing structure, as does the land registry mapping (2015) (see appendix B).
- The appellant has provided a number of examples of developments in the vicinity citing permitted development precedent *inter alia* to support

development visibility (volume) from public observation points. The appeal statement details that a precedent has been established for large multi-level dwellings along Carrickbrack Road and Thormanby Road.

- It is claimed there is a precedent for structures of much more significant footprint (after a review of the Fingal County Council planning registry) in the immediate area. The subject pod would have a minor impact / presence given the small scale and small footprint (45 sqm).
- The subject application was accompanied by an appropriate assessment screening report prepared by Altamar Limited (proximate to Howth Head SAC Code No. 000202, Rockabil to Dalkey Island SAC Code No. 003000). The appellants refute the opinion of the planning authority that the appropriate assessment screening report failed to demonstrate that the construction of the viewing pod did not / would not have a significant effect on the Howth Head SAC. The works were minor in nature and were undertaken in conjunction with the wider redevelopment of the site in 2018.
- The proposal is in accordance with the proper planning and sustainable development of the area and there has not been any significant effects on Natura 2000 (European) sites within the immediate or wider area.

6.2. Applicant Response

N/A first party appeal

6.3. Planning Authority Response

The planning authority reiterates its previous conclusion (the development to be retained is substantially the same as that previously refused in a split decision under reg. ref. F18A/0145 - subsequently withdrawn following a third-party appeal to the Board) that the construction of the viewing pod entailed substantial excavation works and amendments to land levels in a highly sensitive and protected landscape, contrary to the land use zoning and to Objective 2.4 and Policy 2.4.1 of the Howth SAAO.

The planning authority does not accept the applicant's argument that no significant intervention in the landscape took place or that the proposed landscaping plans would mitigate the structure's impact. Furthermore, the applicant's own AA screening report notes that further site works were undertaken around the structure in 2021 to carry out maintenance. This indicates that the continued presence of the structure has a detrimental impact on the landscape.

The planning authority concluded that the applicant's AA screening report was incomplete and that there was insufficient information to make a screening determination for Appropriate Assessment.

Third-party submissions were acknowledged and considered. The planning authority agreed with arguments that the structure would set an unacceptable precedent in the SAAO.

ABP is requested to uphold the decision of the planning authority. In the event an appeal is successful a financial contribution should be attached to the permission.

6.4. Observations

There is one observation from Jacqueline Feely (for Hillwatch), which is summarised below:

- The observer represents a group with members involved in the establishment of the Howth Special Amenity Area and have been represented on the Management Committee of the SAA since its foundation.
- The observation expresses strong support for the decision of Fingal County Council to refuse the application for retention of an unauthorised structure in a site zoned HA within the SAAO. Therefore, the observer respectfully urges An Board Pleanála to uphold the decision of the planning authority.
- no. F18A/0145 permission was refused for retention of the same structure and the applicant was required to remove the structure.
- The site is subject to an Enforcement Order (ENF/18-09B), which was served circa. 2018.

- The viewing pod is clearly visible from Google Maps, including the significant extent of works and disruption of the area around the pod during its construction (image included in observation).
- The subject site is within a high amenity area of outstanding natural beauty with the highest level of protection and sensitivity. The observer agrees with the planning authority that authorisation of the development to be retained would create unacceptable precedent and seriously undermine the protections afforded by the SAAO.

7.0 **Assessment**

- 7.1. The following assessment covers the points made in the appeal submission, the reasons for refusal and is a consideration of the development to be retained. It is noted there are no new substantive matters for consideration.
- 7.2. The existing house on site is a substantial detached dwelling house positioned on site below the access road (Thormanby Road). The subject dwelling house enjoys expansive views over the Irish sea and has a floor area of 951 sqm.
- 7.3. The viewing pod to be retained is an ancillary structure within the grounds of the main house with a footprint of approximately 45 sqm (7.5m in length and 6m in depth) and has a height of 3.19m (internal floor area measures approximately 35 sqm (6650mm x 5255mm)). The structure has a bunker format 'embedded' in the site gradient and is in part subterranean. The structure has glazing facing south (glass doors), a flat roof and render finish. It was constructed circa. 2018 with additional 'maintenance' works recorded in 2021.
- 7.4. The submitted drawings annotate that the pod is fully buried on the west side, rear and top and that the east and south facing elevation only is partially open (see drawing 2015-104-P-PD-100). It is noted in the local authority planning assessment that the appropriate assessment screening report states that additional site works were undertaken around the structure in 2021 to carry out maintenance on the structure including soil movements. The extent of the works are unclear but may have had the objective of mitigating the physicality of the structure. The appellant had previously proposed under F18A/0145 to partially bury and plant over the viewing pod.

- 7.5. The planning authority had previously refused permission for the retention of the viewing pod as part of a larger hybrid application for retention of development and permission for proposed works under F18A/0145 including *retention and completion of partially subterranean viewing pod in garden*. The 4 reasons for refusal in the instance of the previous application for retention and permission are similar to the first 4 reasons for refusal recorded under the subject application under appeal.
- 7.6. The appellant claims that the subject structure replaced an existing structure and has approximately the same footprint of the pre-existing structure. It is claimed that the viewing pod did not result in the removal of the protected heathland comprising maritime grass, which characterises the natural habitat in the vicinity. The planning authority refused permission for the retention of the viewing pod for five number reasons.
- First reason for refusal*
- 7.7. The pod retention by reason of the amendments to existing land levels within a high amenity zone has resulted in a significant intervention into a protected landscape of exceptional value and high sensitivity. The construction of the viewing pod has also resulted in the removal of maritime heathland which is characteristic of the landscape type in Howth. Therefore, the development proposed for retention would materially contravene Policy GINHP28 and Objective GINHO67 of the development plan, which requires the protection of High Amenity areas from inappropriate development.
- 7.8. The appellant claims that the pre-existing structure and associated hard-standing area have resulted in no significant level of intervention into the protected landscape including the removal of a significant section of protected maritime heathland.
- 7.9. A pre-existing garden room was previously accommodated on the application site. The appellant has appended an extract from the Land Registry Map, dated 26th June 2015 (Appendix B). It is claimed that this map clearly identifies a legacy built area (brownfield) within the rear garden of the property.
- 7.10. It is claimed that the pre-existing structure was constructed with timber, windows and a felt roof. The approximate size was 9m by 4m with an eaves height of 2.4m and ridge of 2.8m. The footprint of the original structure is shown colour coded on the submitted drawings.

- 7.11. It is claimed the legacy structure had a water closet, running water and electricity. The structure was removed in the early 2000s following storm damage and the concrete base was retained and covered in Astroturf. The appeal statement contains aerial photographs at specified dates annotated to illustrate the location of the pre-existing structure / concrete base.
- 7.12. For example Figure 4 (appeal statement) a map extract from Google Earth dated 2009 is captioned an illustration of the pre-existing garden room structure within the application site. However, the appeal statement also states the structure was blown down in the early 2000s and subsequently removed. Figure 5 (appeal statement) claims to illustrate the removed garden room footprint covered in Astroturf. The images lack clarity and are grainy given the Google Earth provenance. I consider that the imagery provided is inconclusive.
- 7.13. Policy GINHP28 seeks to protect High Amenity areas from inappropriate development and reinforce their character, distinctiveness and sense of place. The appellant claims that the pod has been appropriately integrated into the landscape in such a manner that the sensitive receiving environment (maritime heathland) has been entirely restored. Notwithstanding the 'embedding process' cited by the appellant, I do not consider that the viewing pod as constructed in terms of its design and render and expansive glazed material finish within the high amenity area reinforces character, distinctiveness and sense of place.
- 7.14. Furthermore, Objective GINHO67 states ensure that development reflects and reinforces the distinctiveness and sense of place of High Amenity areas, including the retention of important features or characteristics, taking into account the various elements which contribute to its distinctiveness including *inter alia* habitat. The appellant claims that a significant section of maritime heathland was not removed in the construction of the pod given its replacement status.
- 7.15. However, the photographic evidence has insufficient definition to determine the nature and extent of the pre-existing structure. I note that the appellant cites the annotation on the development plan zoning maps and encloses the land registry map extract with the notional footprint of the garden room structure / concrete base prior to 2018. However, there is insufficient evidence to confirm categorically that no heathland (habitat) was removed in the demolition and construction process.

Second reason for refusal

- 7.16. The retention of the pod by virtue of the level of excavation undertaken, amendments to land levels, earthworks subsequently carried out for maintenance purposes, and the level of re-landscaping required has resulted and would result in serious injury to the visual amenities of this high amenity landscape of outstanding scenic value and be out of character within the Howth SAAO designation.
- 7.17. The appellant refutes that the viewing pod has injured the visual amenity of the area. It is claimed that the photomontages taken by Arch FX (dated November 2023) confirm that the structure is imperceptible from Howth Cliff walk. Therefore, it is claimed there are no impacts on existing visual amenity. Furthermore, the replacement of the pre-existing structure and hardstanding area resulted in no interference in the SAAO protected landscape.
- 7.18. I can confirm on the day of my site visit that I could not locate the viewing pod from the Howth Cliff walk. However, the claim of the appellant without substantiation by way of detailed photographic or documentary evidence that the replacement of the pre-existing structure, concrete base post early 2000s covered in Astroturf, by the subject viewing pod resulted in no interference in the SAAO protected landscape is not supported.
- 7.19. The matter of excavation / land levels / earthworks is interrogated below.

Third reason for refusal

- 7.20. The construction, retention and continued maintenance of the pod has resulted in the removal of maritime heathland contravenes Objective 2.4 and Policy 2.4.1 of the Howth SAAO, which requires the protection, preservation, and retention of this habitat.
- 7.21. The appellants refute that the construction and retention of the pod has resulted in the removal of a significant section of protected maritime heathland. The appellant reiterates that the pre-existing structure and associated hard standing area has not resulted in the removal of a significant section of protected maritime heathland.
- 7.22. Objective 2.4 of the Howth SAAO seeks to preserve existing areas of heathland and maritime grass land. Policy 2.4.1 prohibits development which would reduce existing areas of heathland and maritime grassland accept for reasons of over-riding public

interest. I note there is no suggestion of over-riding public interest in the demolition / construction process.

- 7.23. The claim of the appellant without substantiation by way of detailed photographic or documentary evidence that the replacement of the pre-existing structure, concrete base post early 2000s covered in Astroturf, by the subject viewing pod resulted in no significant removal of maritime grass in the SAAO protected landscape is not supported.

Fourth reason for refusal

- 7.24. The retention of the pod has resulted in the construction of a significant structure within a high amenity area of outstanding natural beauty, exceptional landscape value and high sensitivity and through land level amendments, subsequent works for maintenance purposes, and the nature of the structure has resulted in the introduction of a significant unnatural man-made structure into a landscape with a distinctive character. And if permitted for retention would result in an unacceptable precedent in terms of undermining of the High Amenity zoning objective and the SAAO designation and the protections afforded to high value landscapes in the vicinity as a consequence.
- 7.25. The appellants assert that the viewing pod is representative of a high quality, small-scale development.
- 7.26. I consider that the physicality of the viewing pod, represented principally by the south glazed elevation, exhibits a generic rendered finish with standard patio type doors (large plate glass panes) with a horizontal emphasise. I concur with the planning authority that the development to be retained represents the introduction of a significant man-made structure into a landscape with a distinctive character.
- 7.27. The matter of development precedent in terms of undermining of high amenity and the SAAO designation and the protections afforded to high value landscapes in the vicinity as a consequence is interrogated below.

Fifth reason for refusal

- 7.28. The fifth reason for refusal relates to appropriate assessment, which is interrogated below.

Zoning / SAAO Designation

- 7.29. The development to be retained is in a high amenity zone and is located within the Howth SAAO designation. The receiving environment is a protected landscape. The zoning objective seeks to protect and enhance high amenity areas. The objectives of the Howth SAAO *inter alia* state: *conserve its natural and cultural assets*.
- 7.30. The appellants claim the viewing pod by reason of its location 'embedded' within the natural gradient of the site, the separation distance between the pod and the Howth Cliff walk and the minimal visibility of the existing site from publicly accessible lands with the 'HA' (High Amenity) zoning objective does not compromise the objectives of the Fingal County Development Plan 2023-2029 in respect of high amenity.
- 7.31. The planning authority have been consistent to date in their assessment of the development to be retained to be inconsistent with the high amenity zoning objective and the SAAO designation. Furthermore, the development to be retained would set an undesirable precedent for development within a protected landscape. I note that site is subject to an Enforcement Order (ENF/18-09B).

Impacts on Howth SAAO (Heathland)

- 7.32. The planning authority assessment evidenced that the construction and retention of the pod has resulted in the removal of a significant section of protected maritime heathland. Furthermore, it is the opinion of the planning authority (submission dated 30/05/24) that the construction of the viewing pod entailed substantial excavation works and amendments to land levels in a highly sensitive and protected landscape.
- 7.33. The appellant claims that the viewing pod is not a new structure but a structure that replaces an existing structure. The appellant has not provided scaled drawings or photographic imagery of the pre-existing structure. However, the appellant states that the pre-existing structure was of timber construction raised on a concrete base.
- 7.34. The observer illustrates their observation with a 'Google Maps' aerial photograph from 2019. I consider that the definition provided by the image is insufficient to use it as an evidence base. However, I note the observer's claim that it represents the significant extent of works and disruption of the area around the pod during construction.
- 7.35. The submitted drawings annotate that the pod is fully buried on the west side, rear and top and that the east and south facing elevation only is partially open (see drawing 2015-104-P-PD-100). Policy 3.4.2 of the Howth SAAO *inter alia* states that

substantial engineering to reconfigure the profile of a landform is not an acceptable form of mitigation.

- 7.36. I consider that the probability is that the pre-existing concrete base was removed and excavation enabling works were conducted circa. 2018 / 2019. A section comparison of the pre-existing structure and the new structure would in part clarify the extent of works to facilitate construction of the subject pod.
- 7.37. The subject viewing pod is of masonry construction. It is in the form of a bunker in part subterranean with south prospect exhibiting a single predominantly glazed elevation. I consider that the construction of the bunker type viewing pod would have required excavation or cut-and-cover construction. I concur with the assessment of the planning authority in regard to enabling works.
- 7.38. Notwithstanding speculation on earthworks within the site, I consider that the 'bunker' viewing pod in terms of building typology is a new structure on site given its masonry, subterranean and expansive glazed characteristics (south elevation) distinct from the notional pitched-roof timber garden room pre-existing in the same location.
- 7.39. The SAAO provides that the removal of heathland / maritime grass land to facilitate development is prohibited if development is not in the overriding public interest. The appellant disputes that heathland was removed in the demolition / construction process effectively arguing that the site of the viewing pod to be retained both in location and extent was a brownfield site cleared of maritime grass by reason of a pre-existing structure and hardstand area.
- 7.40. I consider that the appellant justification (replacement) and demolition / construction methodology is unsupported. The evidence bar is significant given the protected status of the receiving landscape and the prohibition on the removal of heathland. I do not consider that the appellant has provided sufficient evidence to support their claim for benign intervention.

Visibility

- 7.41. The appellants claim the viewing pod is not visible from the public realm due to the topography of the site and the boundary treatments. The development has no impact on the visual amenity of the streetscape (Thormanby / Carrickbrack Road). Furthermore, the visibility of the viewing pod does not compromise any existing

views toward the coast, as demonstrated in the photomontages prepared by Arch FX (included in the appeal statement).

7.42. The Arch FX photomontages were taken in November 2023 (24/11/2023). I consider that they represent a considered visualisation of the site and structure in late autumn / early winter. My site visit was conducted in September 2024 (25/09/24) when arguably there is more dense vegetation coverage along the Howth Coastal walk.

7.43. Views north from the Howth Coastal walk are extremely restricted by the hedgerow vegetation and the gradient. There are open views of the rear grounds of Cliff Haven looking from the coastal walk toward the northeast. I had a perception of the viewing pod in the landscape from my knowledge of the location and physicality of the structure. However, the viewing pod was not visible from the limited vantage points along the Howth Coastal walk looking north / north-east.

Precedent

7.44. The appellants claim that the viewing pod would not set an unacceptable precedent as it comprises the simple replacement of a pre-existing structure. I note the appellant has provided a number of examples of large-scale development in the vicinity citing permitted development precedent *inter alia* to support development visibility (volume) from public observation points.

7.45. The zoning objective of the cited precedent developments are not transparent in the appeal statement. However, I have consulted the relevant zoning map and note that the cited permitted developments are within the 'RS' zoning objective: *Provide for residential development and protect and improve residential amenity*. I do not consider that the cited permitted developments are relevant, as they are not substantively sited within the High Amenity zoning.

7.46. I further note the scope and extent of works to date in the construction and maintenance of the viewing pod within the protected landscape zoned 'HA' (see drawing 2015-104-P-PD-100). Notwithstanding the arguments of the appellant that the viewing pod would not set a an unacceptable precedent, as it comprises the simple replacement of a pre-existing structure, I would concur with the planning authority that the development to be retained would set an undesirable precedent for development in a protected landscape zoned 'HA' within the SAAO designation.

Unintended consequences

7.47. The appellant argues that removing the 'embedded' pod now would result in the loss of this protected maritime heathland. It is claimed a retention permission leaving the pod in place is in the best interest in the protection of the maritime heathland.

7.48. It is considered that the removal of the viewing pod and the clearing of the site in order to enable natural rewilding is an alternative strategy in the best interest of landscape protection within the designated SAAO on a site within a high amenity zoning. I consider that the alternative strategy would set a desirable precedent for the protection of the landscape within the 'HE' zoning and SAAO designation.

7.49. *Other considerations*

7.50. The full observations of the third party are noted.

Conclusion

7.51. The Howth SAAO provides that the removal of heathland / maritime grass land to facilitate development is prohibited if development is not in the over-riding public interest. I conclude that the claim of the appellant without substantiation by way of detailed photographic or documentary evidence that the replacement of the pre-existing structure, concrete base post early 2000s covered in Astroturf, by the subject viewing pod resulted in no removal of the protected landscape is not supported. I concur with the planning authority that the development to be retained would set an undesirable precedent for development in a protected landscape zoned 'HA' within an SAAO designation introducing a man-made structure into a natural landscape of distinctive character.

7.52. Appropriate Assessment Screening

7.53. The development to be retained is modest in scale representing a footprint of 45 sqm.

The Howth Head SAC (66m), Rockabil to Dalkey Island SAC (110m) and the North-West Irish Sea SPA (110m) are proximate to the applicant site. The North-West Irish Sea SPA was announced in July 2023 and was not active during the construction period circa. 2018 or during the maintenance ground works circa. 2021.

An appropriate assessment screening report, prepared by Altamar Limited, was submitted with the application, which concluded that despite the proximity to the conservation sites are not likely to have had any significant effects on any of the

European sites. The rationale is supported by the small-scale nature of the construction, the lack of hydrological pathways and the restricted site outline, which does not extend into the designations.

I note that the development is relatively minor in scale, that it is not within the European designations, that the site is the site of a previous structure evidenced in the land registry map extract, dated 2015, attached as Appendix B of the appeal statement, and that works were undertaken in conjunction with the wider redevelopment of the site in 2018.

Therefore, I consider that it is possible to screen out the requirement (at the time of construction and thereafter) for the submission of an NIS.

8.0 Recommendation

- 8.1. I recommend a refusal of planning permission based on the reasons and considerations set out below.

9.0 Reasons and Considerations

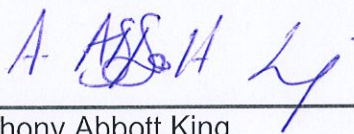
Having regard to the grounds of appeal, the reasons for refusal, the observation of a third party, the HA (High Amenity) zoning objective, which seeks to protect and enhance high amenity areas, the location of the development within the Howth SAAO designation, which *inter alia* seeks to protect its natural and cultural assets. including the characteristic heathland of the receiving landscape and, the policy framework provided by the Fingal County Development Plan 2023-2029, it is considered that the subject viewing pod to be retained, comprising in part a subterranean covered structure elevating south with a floor area of 45 sqm., would be inconsistent with the policy objectives of the Fingal County Development Plan 2023-2029, in specific *Policy GINHP28 and Objective GINHO67*, would be inconsistent with the policy and objectives of the Howth SAAO and would be out of character with the protected heathland, comprising maritime grass land in the vicinity of the subject site, by reason of introducing a man-made structure into a natural landscape of distinctive character and, as such, would be inconsistent with the proper planning and sustainable development of the area.

10.0 Reasons for Refusal

1.	<i>The viewing pod proposed for retention is located within lands zoned HA-High Amenity and by virtue of amendments to land levels has resulted in a significant intervention into the protected landscape of exceptional value and high sensitivity. The viewing pod proposed for retention has also resulted in the removal of maritime heathland which is characteristic of the landscape type in Howth. The development proposed for retention would therefore materially contravene Policy GINHP28 and Objective GINHO67 of the Development Plan which require protection of High Amenity areas from inappropriate development and would accordingly be contrary to the proper planning and sustainable development of the area</i>
2.	<i>The proposed retention of the pod by virtue of the level of excavation undertaken, amendments to land levels, earthworks subsequently carried out for maintenance purposes, and the level of re-landscaping required has resulted and would result in serious injury to the visual amenities of this high amenity landscape of outstanding scenic value and be out of character within the Howth SAAO. The proposed development would not comply with the objective for 'Other Areas' within the SAAO to preserve the beauty and distinctive natural character of the area.</i>
3.	<i>The construction, retention, and continued maintenance of the pod has resulted in the removal of a significant section of protected maritime heathland. As such the proposed development contravenes Objective 2.4 and Policy 2.4.1 of the Howth SAAO which require the protection, preservation, and retention of this habitat</i>
4.	<i>The pod proposed for retention has resulted in the construction of a significant structure within a high amenity area of outstanding natural beauty, exceptional landscape value and high sensitivity and through land level amendments, subsequent works for maintenance purposes, and the nature of the structure has resulted in the introduction of a significant unnatural man-made structure into a landscape with a distinctive character. Having regard to the location of the site and of similar lands in the vicinity, it</i>

	<i>is considered that the development, if permitted for retention would result in an unacceptable precedent in terms of undermining of the High Amenity zoning objective and the SAAO and the protections afforded to high value landscapes in the vicinity as a consequence.</i>
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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.



Anthony Abbott King
Planning Inspector

25th September 2024