



An
Bord
Pleanála

Inspector's Report

ABP-319668-24

Development

Permission for a detached, three storey dwelling and single-storey external store; a vehicular entrance, driveway and on-site parking; a widened gate to existing pedestrian access; all associated site works and services.

Location

Site adjoining 236 Seapark, Malahide, Co. Dublin

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

F23A/0679

Applicant(s)

Mel & Sally Sorohan

Type of Application

Permission

Planning Authority Decision

Grant Permission

Type of Appeal

Third Party

Appellant(s)

Residents of No. 8, 9 and 10 The Courtyard c/o Berardo Pertio

Observer(s)

None

Date of Site Inspection

4th July 2024

Inspector

Emma Nevin

1.0 Site Location and Description

- 1.1. The appeal site measures c.0.19 ha and comprises an area of undeveloped garden area to the side of the existing dwelling No. 236 Seapark. The site is generally rectangular in shape and slopes from south to north, providing views of Malahide and the beach. The site is bound on all sides by fencing, mature hedging, and trees.
- 1.2. The site can be accessed through a pedestrian entrance gate to the side of No. 236 with the site boundary extending to adjoin the access road of Seapark estate.
- 1.3. The site is bound by the existing dwelling and the Star of the Sea Carmelite Monastery to the west, the rear gardens of Nos. 235A and 154 Seapark to the north and the Robswall Estate to the east and south.

2.0 Proposed Development

- 2.1. The proposed development comprises a detached 3 story dwelling with a proposed overall floor area of 503.9 square metres (comprising 466.8 sq. m. dwelling and 37.1 sq. m. external store). The dwelling is contemporary in design with a flat roof, cut stone, render/concrete finish, external glazing and glass balustrade at upper ground floor level to the west elevation. The dwelling will have an overall height of from lower ground floor level of 11.5 metres, approximately.
- 2.2. Access to the dwelling is proposed via a new vehicular entrance off Seapark with driveway and on site parking with the provision of four car parking spaces. The existing grass verge and planting at the end of Seapark will be replaced as part of the proposed works.
- 2.3. The existing pedestrian gate to the northern site boundary of the site is to be widened to 1.6 metres which will be accessed via a new gravel terrace to the rear of the proposed external store.
- 2.4. The proposed works also include associated site and drainage works.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority granted permission, following further information request and clarification of further information request, on 1th April 2024, subject to 14 standard conditions, which included the following:

- Condition 2 relates to the occupancy of the dwelling.
- Condition 5 omits the access gate to the southern site boundary.
- Condition 7 relates to surface water.
- Condition 8 relates to Uisce Eireann requirements.
- Condition 9 specifies several requirements including the car parking provision, entrance gate, services, stormwater, and any works required to public footpaths and roads.
- Condition 10 relates to trees, including a tree survey to be submitted, a tree protection measure and landscaping plan to be submitted.
- Condition 11 specifies requirements in relation to noise insulation for the dwelling having regard to the location of the site within Noise Zone C associated with Dublin airport.

3.2. Planning Authority Reports

3.2.1. Planning Reports dated 3rd January 2024, 1st March 2024, and 8th April 2024 have been provided.

3.2.2. The original planning report considered it necessary to seek further information on the following items:

- To submit updated drawings indicating a minimum separation distance of 22 metres between opposing first floor windows, if necessary, a minimum distance of 11 metres should be provided between the proposed first floor/second floor windows and the boundary of the site.

- To address the objective contained in the Greater Dublin Area Cycle Network Plan and the Fingal County Development Plan Map Sheet No. 9, which shows an indicative cycle route through the site of the proposed development.

3.2.3. Following receipt of the further information the planning authority considered it necessary to request clarification of further information as follows:

- The response to item no. 2 of the further information was not acceptable, as the proposals did not include engagement with the NTA, accordingly the applicant was requested to formally engage with the NTA in relation to the proposed development and the future delivery of the cycle network plan.

3.2.4. The planners report concluded that both the further information and clarification of further information sufficiently addressed all items under the further information requests and that the proposed development is acceptable and is in accordance with the Fingal County Development Plan 2023 – 2029, subject to 14 no. conditions.

3.2.5. Other Technical Reports:

- Water Services: Report received stating no objection.
- Transportation Planning Section: Report received recommending further information and clarification of further information. Following further information, report received stating no objection.
- Parks: No report received.

3.3. Prescribed Bodies

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

- Uisce Eireann: Report received recommended conditions.

3.4. Third Party Observations

3.4.1. Forty (40) third party submission were received, the issues raised can be summarised as follows:

- Object to the proposed insertion of a gateway from the rear of the property to The Heights, Robswall.

- No right of way is present at the at this location, the existing pedestrian gate is unauthorised/ is damaging to the existing boundary fence and no access to the footpath at the heights is acceptable.
- The proposed gate does not have the consent of the adjoining landowner and is contrary to the Planning and Development Regulations.
- The proposed access at The Heights may lead to additional street parking and traffic and robs wall and forward slash or be used by construction traffic comma impacting residential amenity and pedestrian safety including children and while Robswall.
- The proposed gate may be used for vehicular access new line the proposed gate would provide no public benefit or public route.
- A condition should be attached to any granted permission stating that no access to the site be made through the Robswall estate.
- The design, size, and height of the proposed house is not in keeping with the character of neighbouring houses and the surrounding area.
- The proposed house would negatively impact the privacy and residential amenity of neighbouring houses at The Courtyard, Robswall, through overshadowing, loss of light, overlooking and noise.
- The sunlight, daylight and shadow assessment incorrectly indicates No. 8 The Courtyard as a single storey dwelling.

3.4.2. Following the submission of further information, five (5) further third-party observation was received, the issues raised within which can be summarised as follows:

- The revised drawings show a pedestrian right of way from the site into Robswall estate, which is inaccurate and invalid.
- The cycleway should not be disrupted/ obstructed.
- The proposed windows on the east elevation would overlook properties in The Courtyard, Robswall, and would be dominant and overbearing and lead to

overshadowing and loss of privacy. The revised design has not adequately addressed this or moved / reduced the three story element.

4.0 Planning History

None pertaining to this site.

Enforcement history:

The planning report references an enforcement file on site (Ref: 23/256A) in relation to the alleged opening of an entrance to the site off The Heights, Robswall.

5.0 Policy Context

5.1. Fingal Development Plan 2023 – 2029

- 5.1.1. The subject site is zoned 'RS' Residential, with a stated objective "*Provide for residential development and protect and improve residential amenity*".

With a Vision to "*Ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity*".

- 5.1.2. The site is located within Noise Zone C associated with Dublin Airport.
- 5.1.3. A 'Greenway' route is shown as running through the site on the Greater Dublin Area Cycle Network Plan, and Sheet 9 of the Fingal Development Plan.
- 5.1.4. Landscape Character area – coastal, highly sensitive.

5.2. Relevant Development Plan Policy:

- Objective DMS019 – New Residential Development – "Require that applications for residential developments comply with all design and floor area requirements set out in: " Quality Housing for Sustainable Communities – Best Practice Guidelines 2007, " Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009, the companion Urban Design Manual – A Best Practice Guide, DEHLG 2009, " Sustainable Urban Housing: Design Standards for New Apartments 2020".

- Objective DMSO23 – Separation Distances – “A separation distance of a minimum of 22 metres between directly opposing rear first floor windows shall generally be observed unless alternative provision has been designed to ensure privacy. In residential developments over three-storeys in height, minimum separation distances shall be increased in instances where overlooking or overshadowing occurs”.

- Objective DMSO27 – “Minimum Private Open Space Provision Ensure a minimum open space provision for dwelling houses (exclusive of car parking area) as follows:

Houses with 4 or more bedrooms to have a minimum of 75 sq. m. of private open space located behind the front building line of the house. Narrow strips of open space to the side of houses shall not be included in the private open space calculations”.

- Objective DMSO31 – Infill Development New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/gateways, trees, landscaping, and fencing or railings
- Objective DMSO32 – Infill Development on Corner / Side Garden Sites Applications for residential infill development on corner/side garden sites will be assessed against the following criteria:
 - Compatibility with adjoining structures in terms of overall design, scale and massing. This includes adherence to established building lines, proportions, heights, parapet levels, roof profile and finishing materials.
 - Consistency with the character and form of development in the surrounding area. “ Provision of satisfactory levels of private open space to serve existing and proposed dwelling units.
 - Ability to safeguard the amenities of neighbouring residential units.
 - Ability to maximise surveillance of the public domain, including the use of dual frontage in site specific circumstances.
 - Provision of side/gable and rear access arrangements, including for maintenance.

- Compatibility of boundary treatment to the proposed site and between the existing and proposed dwellings. Existing boundary treatments should be retained/ reinstated where possible.
 - Impact on street trees in road-side verges and proposals to safeguard these features.
 - Ability to provide a safe means of access and egress to serve the existing and proposed dwellings.
 - Provision of secure bin storage areas for both existing and proposed dwellings.
- Objective HCAO38 – *“Infill Development Support the development of sustainable backland and infill development that is appropriate in scale and character to historic town and village centres, that transitions appropriately, accommodates surviving structures where appropriate and retains the historic streetscape form”.*
 - Objective SPQHO40 – *“Development of Corner or Wide Garden Sites Favourably consider proposals providing for the development of corner or wide garden sites within the curtilage of existing dwellings in established residential areas subject to the achievement of prescribed standards and safeguards set out in Chapter 14 Development Management Standards”.*
 - Objective SPQHO42 – *“Development of Underutilised Infill, Corner and Backland Sites Encourage and promote the development of underutilised infill, corner and backland sites in existing residential areas subject to the character of the area and environment being protected”.*
 - Objective DMSO71 – Overshadowing of Private Open Space Ensure private open spaces for all residential unit types are not unduly overshadowed.
 - Chapter 14 – Development Management Standards.
 - Section 14.3.2 Screening for Appropriate Assessment.
 - Table 14.4 Infill Development
 - 14.6 Design Criteria for Residential Development in Fingal
 - 14.10 Additional Accommodation in Existing Built-up Areas

- 14.10.1 Corner/Infill Development
- Objective DAO11 - Requirement for Noise Insulation – *“Strictly control inappropriate development and require noise insulation where appropriate in accordance with Table 8.1 above within Noise Zone B and Noise Zone C and where necessary in Assessment Zone D, and actively resist new provision for residential development and other noise sensitive uses within Noise Zone A, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of the runways are not unreasonable to minimise the adverse impact of noise on existing housing within the inner and outer noise zone”.*

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 A: Glossary of Terms.
- Design Manual for Urban Roads and Streets (2013),
- Development Management Guidelines (2007),
- 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 following sites in the vicinity of the appeal site should be noted:

- 500m from the Malahide Estuary SAC (Site Code: 000205), which is located to the south-west of the site.

- 500m kilometres from the Malahide Estuary SPA (Site Code: 004025), which is located to the south-west of the site.

5.5. EIA Screening

5.5.1. I refer the Board to the completed Form 1 in Appendix 1.

Having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A third part appeal has been received from the residents of No. 8, No. 9 and No. 10 The Courtyard, Malahide Co. Dublin. The grounds of the appeal have been reviewed and are summarised below:

- Land use zoning – it is considered that the proposed development is not in line with the zoning objective policy as the proposal includes the development of only one additional dwelling house on a large Greenfield site within an established residential estate whereby the pattern of development is generally semi detached and terraced dwellings. The proposal must be considered in respect of the overall zoning objective to provide a balanced sustainable development to the benefit of the community as a whole.
- Underdevelopment of infill site - the proposal represents a poor utilisation of the development site and notable underdevelopment of land within the surrounding area the proposed development sprawling layout and single dwelling nature is incongruous with the established density norms of the town.
- Context with adjoining developments - the development consists of one large singular volume development with expansive garden area. The residential developments surrounding the proposed site exhibit a distinct architectural

character within the Robswall estate comprising higher densities and shared parking areas to the front of some dwellings. It is considered the proposed development does not align with the surrounding context and would result in a disjointed development pattern in the area.

- The scale, bulk and height of the development is not consistent with the surrounding area and would result in an overbearing impact on the existing residents in the area most notably that of the appellants within Nos.8, 9, and 10 The Courtyard, Robswall. The proposal would also have a very concerning overbearing impact on the adjoining dwellings located directly across from the windows on the east elevation of the proposed development and raise serious concerns in relation to privacy. The proposed development would be detrimental to the residential amenity and privacy as a whole of the appellants. The Planning Authority has not addressed the relevant Development Plan policy in relation to overbearance and overlooking.
- Separation distance between opposing windows – the Planning Authority have not made a fully informed decision on the separation distances between the proposed development and the appellants property.
- The appellants would welcome an appropriately designed residential development on the lands, that would complement surrounding context.
- An alternative development would be redesigning the proposal to reduce the number of floors from three to two to avoid overbearance and overlooking.

6.2. Applicant Response

6.2.1. A first party response to the appeal was received dated 28th May 2024, prepared by the applicant's agent.

6.2.2. The submission responds to the issues raised within the third party appeal as follows: -

- Disagree with the conjecture that the proposed development is not consistent with the zoning objective. Residential use is permitted under this zoning objective. As can be seen from the contiguous elevations the proposed

development is not out of keeping with the heights already in the area and is generally three storey as suggested by the appellants.

- The house design has been carefully modulated to maximise this essence sustainability of the structure.
- The site is not appropriate for a much higher density development due to its location which is distant from public transport and the centre of Malahide.
- Reference is made to Section 3.4.2 of the Guidelines for Planning Authorities on Sustainable Residential Developments and compliance with same.
- The proposed development is an appropriate development on the site.
- An infill residential development in a residential area whose character is established by both density and architectural form, a balance has to be struck between the reasonable protection of amenities and privacy of adjoining dwellings the protection of established character, and the need to provide residential infill.
- There will be no discernible negative impact on the visual or residential amenity of the area. The proposed house will be an attractive architectural design building with an attractive finish and would not negatively affect the amenity of joining properties or the wider area for overlooking of neighboring properties is minimised.
- To overcome adequate separation distances the 1st and 2nd floor windows on the east elevation are non-openable and contain frosted glass so overlooking is eliminated to neighbouring houses at The Courtyard.
- The proposed development complies with the requirements of the BRE Guidelines for impact on amenity sunlight/ shadow.
- The residential amenity presently enjoyed by residents in the immediate area including the appellants properties will not be affected by the proposed development which has been sensitively designed to minimize externalities and is keeping with the proper planning and sustainable development of the area.

6.3. Planning Authority Response

6.3.1. Report received dated 30th May 2024, stating that the application was assessed against the policies and objectives of the Development Plan and existing government policy and guidelines and having regard to the development plan zoning objective. The Planning Authority considers that the development would comply with Development Plan objectives SPQHO42, DMSO19, DMSO31 and DMSO32 for new infill/corner housing. The Planning Authority assessed that the proposal was an appropriate proposal for the site and was acceptable in terms of density, size/massing and design. The appellants argument that the development would be insufficiently dense but excessively large is not considered consistent.

6.3.2. The Planning Authority assessed that the proposed first and second floor windows would comply with the requirements of SPPR1 of the 'Sustainable Residential Development and Compact Settlement Guidelines', which was published after the planning authority requested additional information on which supersedes objective DMSO23 of the Development Plan. The planning authority considered that amendments to windows proposed through additional information what adequately mitigate overlooking impacts, and compliance with SPPR1. The Planning Authority believes that development as a result would not overlook or impinge on neighbouring properties or result in overshadowing or significant loss of residential amenity. Concerns set out in third party objections were acknowledged and considered. The planning authority agreed that the proposed rare pedestrian gate would not connect to a footpath or have the consent of the neighbouring landowner and should be omitted, and the board is accordingly requested to include a condition requiring the submission in any granted permission.

The Planning Authority respectfully requests that its decision is upheld.

6.3.3. In the event that the Planning Authority's decision is upheld, the Planning Authority requests that conditions requiring financial contributions in accordance with the Section 48 Development are included.

6.4. Observations

None received.

6.5. Further Responses

None received.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including the third party appellant's submissions (the subject matter of this appeal), site inspection and having regard to the relevant policies, objectives, and guidance, I am satisfied that the main issues to be considered are those raised in the grounds of appeal, and I am satisfied that no other substantive issues arise. This assessment represents my de novo consideration of all planning issues material to the proposed development.

7.2. As such, the main issues in determining this appeal are as follows:

- I. Principle of Development and Development Plan Compliance
- II. Form, Layout and Design
- III. Impact on Residential Amenity
- IV. Appropriate Assessment, and
- V. Other Matters including Conditions.

7.3. Principle of Development and Development Plan Compliance

- 7.3.1. The appellant submits that the proposed development is contrary to the zoning objective for the site, as the proposal includes the development of only one dwelling on a large greenfield site, and the proposal must be considered in respect of the overall zoning objective to provide balanced sustainable development to the benefit of the community.
- 7.3.2. The applicable Development Plan for development in the area is the Fingal County Development Plan, 2023 – 2029. Under the Development Plan, the site is zoned 'RS' residential, with a vision to ensure that any new development in existing areas would have a minimal impact on and enhance existing residential amenity. Accordingly, residential development is permitted in principle under this zoning objective and therefore, I consider the principle of the proposed development to be acceptable.

- 7.3.3. In relation to corner/infill development, I reference Section 14.10.1 of the Development Plan which highlights that the Council seeks to encourage the development of infill housing on underutilised infill and corner sites in established residential areas, where proposals are cognisant of the prevailing pattern of development in the area. I also note Objective DMSO32, which details the specific requirements and criteria in relation to infill development on corner/side garden sites. Section 14.6 relates to Design Criteria for Residential Development, for new housing specifically residential infill. Having regard to the specific requirements as outlined in the Development Plan, I consider that the number, design and layout of residential development as proposed would be acceptable and in accordance with the Development Plan requirements in this regard.
- 7.3.4. As such the principle of the proposed development is acceptable and is in compliance with relevant Development Plan policies and objectives.

7.4. Form, Layout and Design

- 7.4.1. Concerns have been raised in the third-party appeal, in relation to the underdevelopment of the site and the context of the proposed development with the adjoining developments. Additionally, concerns have been raised in relation to the scale and bulk of the development in the landscape.
- 7.4.2. The development as proposed consists of one, large, detached dwelling, on a 0.19ha corner site to the side of the existing detached dwelling No. 236. While I recognise the need to utilise these side garden plots to promote consolidation and compact growth, I note the site characteristics associated with this specific plot, in particular the position of the site, a distance from the centre of Malahide village, the sloping nature of the site, the relationship with the adjoining existing residential development and the singular entry point to the site. In this regard, I consider that the proposal for one additional dwelling on this side garden site to be acceptable and as noted in Section 7.3 above accords with the zoning objective of the area.
- 7.4.3. In relation to the context of the proposal within the immediate area, I note that the Seapark development comprises a mix of detached and semi-detached dwellings, with some larger detached corner infill development. To the north of the site is a residential development 'Biscayne', which comprises detached and semi-detached

dwelling, with some larger corner site plots. The appellant's site is located to the east, and comprises a higher density residential development, mainly comprising terraced dwellings. Noting this context, I consider that the proposal for one detached dwelling on this corner site to be an acceptable form of development and is consistent with the existing pattern of residential development in the immediate area.

- 7.4.4. In relation to the proposed design, the dwelling reads as a contemporary three storey dwelling. As such, I reference Objective SPQHO43 of the Development Plan, which promotes the use of contemporary and innovative design solutions subject to design respecting the character and architectural heritage of the area. Section 14.10.1 of the Development Plan, also states that in relation to corner/infill development that contemporary design is encouraged. Noting this specific context and having regard to the gable fronted three storey nature of the existing dwelling at 236 Seapark, I consider that the proposal for a three storey dwelling to be acceptable in this instance and the proposal is of a high quality design that accords with the site characterises and makes a positive contribution to the streetscape at this location.

7.5. Impact on Residential Amenity

- 7.5.1. The appellant expresses several concerns regarding overlooking, loss of privacy, and overbearance on adjoining sites in particular to the east. The appellant also considers that the assessment of the received further information does not give appropriate weight to the non-complaint separation distances and this should be reassessed.

Overlooking/loss of privacy:

- 7.5.2. As part of the further information request, the applicant was requested to provide updated drawing and designs, which provide a minimum separation distance of 22 metres between opposing first-floor windows. As part of the assessment the planner referred to the timing of the adopted 'Sustainable Residential Development and Compact Guidelines, 2024, and specifically SPPR1, which it is stated reduces the requirement for separation distances between opposing first floor windows, and notes the measures proposed by the applicant, including non-openable frosted glass to the upper ground floor and first floor windows to the west side elevation of the proposed dwelling. This was found to be acceptable by the planning authority.

7.5.3. The proposed dwelling is orientated to the north of the site and the side elevations of the proposed dwelling addresses the existing dwelling No. 236 Seapark to the west and Nos. 8, 9, and 10 The Courtyard to the east.

7.5.4. I reference Section 5.3.1 Separation Distances of the 'Sustainable Residential Development and Compact Guidelines, 2024, which state that, "a requirement for a minimum separation of 22 metres between opposing upper floor rear windows has formed part of suburban housing design since the early 20th century. The standard does not account for modern methods of design and construction and the capability of modern computer-based design programmes to model outcomes in relation to sunlight, daylight, and privacy. Through the careful massing and positioning of blocks, positioning of windows and the integration of open space at multiple levels it is possible to achieve a high standard of residential amenity and good placemaking with separation distances of less than 22 metres. Separation distances should, therefore, be determined based on considerations of privacy and amenity, informed by the layout, design and site characteristics of the specific proposed development".

I also note SPPR1, which the planning authority referred to as part of their assessment of the proposed development, which states that "development plans shall not include an objective in respect of minimum separation distances that exceed 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units or apartment units above ground floor level. When considering a planning application for residential development, a separation distance of at least 16 metres between opposing windows serving habitable rooms at the rear or side of houses, duplex units and apartment units, above ground floor level shall be maintained. Separation distances below 16 metres may be considered acceptable in circumstances where there are no opposing windows serving habitable rooms and where suitable privacy measures have been designed into the scheme to prevent undue overlooking of habitable rooms and private amenity spaces".

In relation to the term 'habitable rooms', I also note that this relates to primary living spaces such as living rooms, dining rooms, studies, and bedrooms.

7.5.5. Noting the proposed development, at upper ground floor level, the windows facing to the east serve the stairwell/lift and a side window to the living room, whilst at first floor level the windows facing to the east serve the stairwell/lift and a side window to

the bedroom. The fenestration serving the habitable rooms to the east are not the principal windows serving these rooms (larger fenestration proposed to the northern elevation to serve the living room and bedroom) and all the fenestration to the east side elevation, serving these floors, has been designed to be non-opening windows with frosted glass. Separation distances of 14.6 metres to 17.6 metres are proposed from the side gable, upper floors to the rear of the nearest dwellings to the east i.e. Nos. 9 and 10 The Courtyard. A separation distance of 19.4 metres is proposed to the rear of No. 8 The Courtyard. As such, I do not consider that the proposed development would result in undue overlooking or loss of privacy of the adjoining dwellings to the east and would be acceptable.

Overbearing/overshadowing:

- 7.5.6. With respect to visual impact, the proposed development will be located to the side of the existing site at No.236 Seapark, the proposed dwelling is orientated to the north and is set back from the established building line along Seapark, to the west. The side elevation of the proposed dwelling aligns with the rear gardens of the adjoining dwellings to the east, at the Courtyard. The proposed dwelling has an overall height of 10.250 metres, at first floor level, with the highest section of the dwelling set back some 6.4 metres and 17.3 metres from the adjoining site boundaries to the east and west of the site. While I note that the proposed dwelling has a higher ridge height to that of the adjoining dwellings, given the stepped nature of the proposed dwelling, the sloping nature of the site and the contemporary design, I consider that the proposed dwelling will assimilate successfully into the streetscape at this location.
- 7.5.7. While the proposed dwellings will be visible from the adjoining sites, I do not consider that the development would result in a visually overbearing form of development given the proposed form and layout and would be an attractive infill development for this site. I also note the mature planting to all site boundaries of the proposed site, which will also assist in screening any development at this location.
- 7.5.8. In terms of overshadowing, while not specifically raised in the appeal, I note that a shadow survey was undertaken by the applicants, having carried out a site visit, reviewed the planning application drawings and documentation and noting the scale,

height, and location of the proposed development, I do not consider that the proposed development would contribute to significant overshadowing of the adjoining properties to the north, east and west of the site, in particular.

- 7.5.9. Therefore, I am satisfied that the proposed dwelling will not detract from or impact negatively upon adjoining residential or visual amenity.

7.6. Appropriate Assessment

- 7.6.1. I have considered the application for a detached, three storey dwelling and single-storey external store, a vehicular entrance, driveway and on site parking, a widened gate to existing pedestrian access, all associated site works and services, in light of the requirements S177U of the Planning and Development Act 2000 as amended.
- 7.6.2. The subject site is located an approximate distance from the following Natura 2000 Sites:
- 500m from the Malahide Estuary SAC (Site Code: 000205), which is located to the south-west of the site.
 - 500m kilometres from the Malahide Estuary SPA (Site Code: 004025), which is located to the south-west of the site.
- 7.6.3. As noted in the forgoing, the proposed development comprises a detached, three storey dwelling and single-storey external store at this location. The proposed works also include a vehicular entrance, driveway and on site parking; a widened gate to existing pedestrian access; all associated site works and services.
- 7.6.4. No nature conservation concerns were raised in the planning appeal.
- 7.6.5. Having considered the nature, scale, and location of the project, I am satisfied that it can be eliminated from further assessment because there is no conceivable risk to any European Site. The reason for this conclusion is as follows:
- Nature of works comprising a detached three storey dwelling, and associated works in a residential location.
 - The location and distance from nearest European site and the lack of any hydrological connectivity between the application site and the SAC/SPA.
 - Taking into account screening report/determination by Planning Authority.

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

7.6.7. Likely significant effects are excluded and therefore Appropriate Assessment (stage 2) (under Section 177V of the Planning and Development Act 2000) is not required.

7.7. Other Matters including Conditions

7.7.1. Proposed widened gateway to the southern site boundary:

As part of the development works, it is proposed to widen the existing 800mm wide pedestrian gate to 1.6 metres. The Planning Authority in their assessment stated that several public submissions received objected to the proposed gate to The Heights, Robswall and indicated that no gate was present during site visit on 11th December 2023. However, at time of my site inspection (4th July 2024), I noted that there is an existing pedestrian entrance gate to the southern boundary fence of the site. No access was available to the adjoining lands, at Robswall, at time of my inspection, as the gate appeared to be locked from the adjoining lands. The gate is also visible in the fence from the Robswall estate side.

The Planning Authority also stated that the adjoining land in The Heights is privately owned, and no letter of consent for the proposed works have been submitted from the adjoining landowner as part of the planning application. Additionally, the Planning Authority notes that the proposed gate would not connect to the privately owned footpath in The Heights, and there is no proposal to do so. In this regard, the Planning Authority included Condition 5 to the grant of permission, which states; *"The proposed pedestrian gate at the southern boundary of the site into The Heights, Robswall shall be omitted"*.

While I acknowledge the presence of the existing gate to the southern site boundary, I do consider that alterations to the shared site boundary with the adjoining site and access to the adjoining lands is a civil matter to be resolved between the parties, having regard to the provisions of s.34(13) of the 2000 Planning and Development Act. In the absence of the written consent from the adjoining landowner for these

works (as part of the planning application or appeal) to the shared boundary treatment, I concur with the Planning Authority and would recommend the inclusion of a similar condition omitting the proposal to widen the existing pedestrian entrance gate, as noted above, in any grant of permission.

7.7.2. Car parking and access:

The submitted plans indicate parking for four no. spaces on site. The report received from Transportation Planning notes that the development is located 1.5km of the Malahide Dart Station, which would place it in 'Zone 1' in regard to the car parking standards outlined in table 14.18 and 14.19 of the Fingal Development plan 2023-2029. As a result, this would place a carparking requirement of 1 car parking space on the proposed development. It was recommended that a condition be attached to reduce the number of car parking spaces to 1 space, to serve the dwelling, Condition 9 (a) of the grant of permission relates. While the inclusion of this condition is noted, given the location of the site relative to public transport, and following site my inspection, I observed a number of cars parked on the roadway within the residential estate of Seapark. Therefore, to avoid excessive on street parking to the front of the subject site, and along Seapark at this location, I consider that a maximum of 2 parking spaces be provided to serve the proposed development, which will avoid additional on-street parking at Seapark and will allow for 1 visitor space to the front of the proposed dwelling. As such, I recommend that Condition 9 (a) be amended to include 2 car parking spaces and included in this regard.

In relation to the proposed vehicular entrance, I also note that Transport Planning requested that the proposed vehicular entrance have a clear opening of 4 metres, Condition 9 (d) of the grant of permission relates, to allow for adequate pedestrian-vehicular inter-visibility at the intersection of the entrance with the public footpath. I concur with this condition and recommend that it should be included as part of any grant of permission.

7.7.3. Greater Dublin Area Cycle Network Plan:

An indicative cycle route is shown as running through the site on the Greater Dublin Area Cycle Network Plan, and Sheet 9 of the Fingal Development Plan. Following the clarification of further information the application confirmed, following

consultation with the National Transport Authority (NTA), there is no objection to the development as proposed, and it was considered by the NTA the development would not prejudice a cycle route (or alternative) through Seapark/Robswall. Accordingly, the development will not impact on or is not considered necessary for the delivery for the cycle route and is indicative in nature.

7.7.4. Other Conditions:

As noted in Section 3.1.1 of the foregoing, the local authority recommended a grant of permission subject to 14 no. conditions.

Notwithstanding the above assessment, a condition has also been included in relation to the proximity of the site and Dublin Airport, this is considered reasonable.

The remaining conditions are considered to be standard and given the nature and scale of the proposed development, I concur with the local authority and recommend the inclusion of standard conditions in this instance.

8.0 **Recommendation**

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

9.0 **Reasons and Considerations**

- 10.0 Having regard to the 'residential' 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 corner/side garden development in terms of scale, design, form and layout, would not seriously injure the residential and visual amenities of the adjoining residential development by reasons of overbearing, overshadowing or overlooking and would not impact on the character or visual amenity of the area. The proposed development complies with

the Development Plan and accords with the proper planning and sustainable development of the area.

11.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by the planning authority on the 8th day of February 2024, further amended by the further plans and particulars received by the planning authority on the 15th day of March 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.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>The proposed dwelling 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>Reason: To restrict the use of the extension in the interest of residential amenity</p>
3.	<p>The proposed widened pedestrian gate to the southern site boundary into The Heights, Robswall, shall be omitted from the development hereby permitted.</p> <p>Reason: In the interest of clarity.</p>
4.	<p>The glazing to all bathroom and en-suite windows shall be manufactured opaque or frosted glass and shall be permanently maintained. The application of film to the surface of clear glass is not acceptable.</p> <p>Reason: In the interest of residential amenity.</p>

5.	<p>The applicant/developer shall comply with the following:</p> <p>(a) The proposed development shall be restricted to two car parking spaces only.</p> <p>(b) No gate shall open across a public footpath/roadway.</p> <p>(c) No objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding a height of 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes.</p> <p>(d) The vehicular entrance shall have a clear opening width of 4 metres, in order to ensure there is adequate pedestrian/vehicular inter-visibility at the intersection of the entrance with the public footpath.</p> <p>Reason: In the interests of traffic and pedestrian safety.</p>
6.	<p>Prior to the commencement of development, the developer shall enter into a Connection Agreement(s) with Uisce Eireann to provide for a service connection(s) to the public water supply and / or wastewater collection network.</p> <p>Reason: In the interest of public health and to ensure adequate water/ wastewater facilities.</p>
7.	<p>(a) An accurate tree survey of the site, which shall be carried out by an arborist or landscape architect, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The survey shall show the location of each tree on the site, together with the species, height, girth, crown spread and condition of each tree, distinguishing between those which it is proposed to be felled and those which it is proposed to be retained.</p> <p>(b) Measures for the protection of those trees which it is proposed to be retained shall be submitted to, and agreed in writing with, the planning authority before any trees are felled.</p> <p>(c) The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed</p>

	<p>in writing with, the Planning Authority prior to commencement of development.</p> <p>Reason: To facilitate the identification and subsequent protection of trees to be retained on the site, in the interest of visual amenity.</p>
8.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) located outside buildings or not attached to buildings shall be located underground. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development. Details of the ducting shall be submitted to and agreed in writing by the planning authority prior to the commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
9.	<p>Site development and building works shall be carried out only between the hours of 0700 and 1800 Mondays to Fridays inclusive, between 0800 to 1300 hours on Saturdays and not at all on Sundays and public holidays. 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 amenities of properties in the vicinity.</p>
10.	<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, including responsibility and repair for any damage to the public road to the satisfaction of the planning authority, during the course of the works.</p> <p>Reason: To protect the amenities of the area.</p>
11.	<p>The house 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>

12.	<p>The disposal of surface water shall comply with the requirements of the planning authority for such works and services. Prior to the commencement of development, the developer shall submit details for the disposal of surface water from the site for the written agreement of the planning authority.</p> <p>Reason: To prevent flooding and in the interests of sustainable drainage.</p>
13.	<p>The developer shall ensure that the development is served by adequate water supply and/or wastewater facilities and shall enter into a connection agreement (s) with Uisce Éireann (Irish Water) to provide for a service connection(s) to the public water supply and/or wastewater collection network.</p> <p>Reason: In the interest of public health and to ensure adequate water/wastewater facilities.</p>
14.	<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.



Emma Nevin
Planning Inspector

23rd July 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	319668-24		
Proposed Development Summary	A detached, three storey dwelling and single-storey external store; a vehicular entrance, driveway and on site parking; a widened gate to existing pedestrian access; all associated site works and services.		
Development Address	Site adjoining 236 Seapark, Malahide, Co. Dublin		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes	X	Urban Development	EIA Mandatory EIAR required
No			
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]?			
		Threshold	Comment (if relevant)
No		N/A	
Yes	X	Urban Development	One dwelling house

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

Appendix 1 - Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	319668-24	
Proposed Development Summary	A detached, three storey dwelling and single-storey external store; a vehicular entrance, driveway and on site parking; a widened gate to existing pedestrian access; all associated site works and services	
Development Address	Site adjoining 236 Seapark, Malahide, Co. Dublin	
The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>Proposal for 1 no residential unit 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
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having regard to other existing and/or permitted projects?</p>	<p>Site measuring 0.19 ha. with a proposed floor area of 503.9 sq. m. (466.8 sq. m house & 37.1 sq. m. store). However, this is not considered exceptional in the context of the existing urban environment.</p> <p>There are no other developments under construction in the proximity of the site.</p>	No
Location of the Development		No

<p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p>	<p>The appeal site is not located within any Natura site. The closest such sites are the Malahide Estuary SAC (Site Code: 000205), which is located 500m to the south-west of the site; and the Malahide Estuary SPA (Site Code: 004025), which is located 500m to the south-west of the site however, it is not considered that the development would have a significant impact on the ecological sites.</p> <p>No, there are no natural heritage designations in the immediate vicinity of the site.</p> <p>There are no other locally sensitive environmental sensitivities in the vicinity of relevance.</p>	
<p style="text-align: center;">Conclusion</p>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p>		

Inspector: 

Date: 23rd July 2024

DP/ADP: _____ Date: _____
(only where Schedule 7A information or EIAR required)