



An  
Bord  
Pleanála

## Inspector's Report

### ABP-320029-24

#### Development

Construction of 25 no. residential units (24 no. 3-bed houses and 1 no. 4-bed houses) in end-terraced and mid-terraced houses, external bin stores, car parking, and bike stores. The development will provide for a proposed vehicular access off the Loughcommon Court, provision of public open space, landscaping, boundary treatment, public lighting, 1 no. ESB sub-station, and all associated site and engineering works.

#### Location

Loughcommon Court, Lusk, Co. Dublin

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

F24A/0318E

#### Applicant(s)

Rimford Developments Ltd.

#### Type of Application

Permission

#### Planning Authority Decision

Refuse Permission

**Type of Appeal**

First Party

**Appellant(s)**

Rimford Developments Ltd.

**Observer(s)**

None

**Date of Site Inspection**

4<sup>th</sup> December 2024

**Inspector**

Emma Nevin

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## 1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.714 ha, is located within a residential development to the east of Lusk. The appeal site relates to a vacant piece of land within an established residential development. The site is located to the south of Loughcommon Court, to the north of Rathmore Green, and to the east of Loughcommon Lane. The R127, and the public footpath adjoins the site to the east. the site is mostly vacant, with some storage containers present on site. The site is enclosed with palisade fencing.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the construction of 25 no. two-storey houses in a mix of 24 no. three bed houses and 1 no. four bed unit.
- 2.2. The proposed dwellings will be positioned to the western, southern, eastern, and northern portion of the site, with the proposed open space to the centre of the site adjoining the road adjacent to the proposed vehicular entrance.
- 2.3. Each dwelling will be served by off street car parking and a dedicated rear garden.
- 2.4. Accessed to the site will be via a vehicular entrance to the northern site boundary within the estate. A new internal access road, footpaths, etc. is proposed.
- 2.5. Table 1 below provides a schedule of the key figures associated with the proposed development:

Table 1 - Site / Development Details	
Site Area	0.714 ha
Gross Floor Area	2,863.40 sq. m.
No. of proposed units	25
Car Parking	35 spaces (1.4 car parking spaces to serve each unit).
Public Open Space	0.102 ha.

### 3.0 Planning Authority Decision

#### 3.1. Decision

- 3.1.1. The Planning Authority refused permission on the 30<sup>th</sup> May 2024 for the following reasons:

*“1. The application site is subject to a Map Based Local Objective for a "Proposed Primary School (PS)" within the Fingal Development Plan 2023-2029. The proposed development would fail to make provision for a primary school and would therefore contravene the map based local objective, would be contrary to Objectives CIOSO18 and CIOSO19 relating to educational facilities in the Fingal Development Plan 2023-2029 and would therefore be contrary to the proper planning and sustainable development of the area.*

*2. The proposed development, having regard to the inadequate and insufficient provision and layout of public open space would fail to provide a satisfactory standard of development and level of amenity for future residents, would be contrary to Objectives CIOSO38, DMSO51, DMSO64 and DMSO17 of the Fingal Development Plan 2023-2029 and would therefore be contrary to the proper planning and sustainable development of the area”.*

#### 3.2. Planning Authority Reports

- 3.2.1. A planning Report dated 28<sup>th</sup> May 2024 has been provided.
- 3.2.2. The original planning report concluded that *“Having regard to the nature of the development, the specific local objective for the provision of a primary school in this location as identified in the Fingal County Development Plan, and the inadequate provision of public open space, the proposed development would fail to comply with the Policies & Objectives within the Fingal Development Plan 2023-2029, provide a satisfactory standard of residential amenity and would therefore not be acceptable. It is considered permission should be refused for the reasons below”*, and as such permission was refused for three reasons as noted in Section 3.1.1 above.
- 3.2.3. Other Technical Reports:
- Uisce Éireann: No objection, subject to conditions.

- Water Services: No objection, subject to condition.
- Transportation Planning Section: No objection, subject to conditions.
- Parks & Green Infrastructure Division: Proposal not deemed acceptable.
- Public Lighting: No objection, subject to conditions.
- Housing Department: No objection. Validation letter issued.
- Heritage Officer / Community Archaeologist: No objection, subject to conditions.
- Environment Officer: No objection, subject to condition.

### 3.3. **Prescribed Bodies**

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

- Department of Education - No report received.

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

3.4.1. One (1. no.) third party submissions was received within the statutory timeframe, which raised the following issues:

- Overlooking.
- Traffic and Parking.
- Lack of footpaths.
- The retention of the boundary fence.
- Childcare facilities.

## 4.0 **Planning History**

4.1. Subject site:

- Reg. Ref. 97A/0634: Permission granted by Fingal County Council on 10<sup>th</sup> August 2023 for horticultural farm and two dwelling with biocycles.

4.2. Adjoining sites:

The planners report contains a detailed planning history of the adjoining sites to the north, east and south of the appeal site in particular the following where permission was granted for residential development:

- An Bord Pleanála Ref: 310359-21/Reg. Ref. F20A/0523: Permission granted by Fingal County Council and decision to grant upheld by An Bord Pleanála for residential development on lands to the north of the appeal site to the east and west of Rathmore Road and Lusk North Park at Clonrath Avenue.
- An Bord Pleanála Ref: PL06F.247787/Reg. Ref. F15A/0565: Permission granted by Fingal County Council and decision to grant upheld by An Bord Pleanála for a mixed-use development including residential development, retail uses, and all ancillary uses on lands to the west of the appeal site at Station Road, Lusk.

This parent permission was amended by both Reg. Ref. F19A/0479 and Reg Ref. F19A/0633, both of which were granted permission by Fingal County Council.

## **5.0 Policy Context**

### **5.1. Fingal Development Plan 2023 – 2029**

- 5.1.1. The subject site is zoned 'RA' Residential Area, with a stated objective *"Provide for new residential communities subject to the provision of the necessary social and physical infrastructure"*.

With a vision to *"Ensure the provision of high quality new residential environments with good layout and design, with adequate public transport and cycle links and within walking distance of community facilities. Provide an appropriate mix of house sizes, types, and tenures in order to meet household needs and to promote balanced communities"*.

- The site is within the Lusk Specific Objective Development Boundary.
- The site contains a Specific Objective Point for a proposed primary school 'PS' (Sheet 6A)
- The application site is located within the low-lying Agricultural Landscape Character Type.



5.1.2. The following are of particular relevance:

Chapter 2 – Planning for Growth Core Strategy and Settlement Strategy

- Table 2.10: Table 2.10: Remaining Zoned Residential Capacity from Fingal Development Plan 2017–2023
- Table 2.14: Core Strategy – 2023–2029 Fingal Development Plan
- Table 2.20: Fingal Settlement Hierarchy
- Table 2.21: Fingal Settlement Hierarchy
- Policy CSP12 - NPF and RSES
- Policy CSP15 - Compact Growth and Regeneration
- Policy CSP18 - Promotion of Residential Development
- Policy CSP34 - Consolidate Growth of Self-Sustaining Towns
- Policy CSP36 - Focus Growth Within and Contiguous to Core in Self-Sustaining Towns
- Policy CSP38 - Malahide, Balbriggan, Lusk, Portmarnock, Rush and Skerries
- Objective CSO17 - Mixture of House Types
- Objective CSO50 - Active Travel Connections Between Donabate-Rogerstown Park and Lusk-Rush
- Objective CSO51 - Support Growth of Self-Sustaining Towns
- Objective CSO52 - Safe and Convenient Road, Pedestrian and Cycle Systems

Chapter 3 – Sustainable Placemaking and Quality Homes.

- Objective SPQHO1 - Sustainable Communities
- Objective SPQHO2 - Key Principles
- Policy SPQHP5 - Quality Placemaking
- Policy SPQHP6 - Urban Design
- Policy SPQHP5 - Quality Placemaking
- Policy SPQHP9 - Core Strategy and Housing Growth

- Objective SPQHO10 - New Residential Development
- Objective SPQHO12 - Fingal Settlement Strategy
- Objective SPQHO31 - Variety of Housing Types
- Policy SPQHP20 - Adaptable and Flexible Housing
- Policy SPQHP23 - Affordable, Social and Specialised Housing
- Policy SPQHP29 - Housing for All
- Policy SPQHP30 - Social, Affordable and Cost Rental Housing
- Policy SPQHP31 - Housing Type and Tenure
- Policy SPQHP35 - Quality of Residential Development
- Objective SPQHO38 - Residential Development at Sustainable Densities
- Objective SPQHO39 - New Infill Development
- Objective SPQHO1 - Sustainable Communities
- Objective SPQHO5 - Universal Design Approach
- Objective SPQHO9 - Consolidated Residential Development
- Objective SPQHO10 - New Residential Development
- Objective SPQHO11 - Fingal Settlement Strategy
- Objective SPQHO22 - Accessible Housing
- Objective SPQHO31 - Variety of Housing Types
- Objective SPQHO33 - New Residential Development and Energy Efficiency
- Objective SPQHO34 - Integration of Residential Development
- Objective SPQHO35 – Private Open Space
- Objective SPQHO36 – Public open Space
- Objective SPQHO38 - Residential Development at Sustainable Densities
- Objective SPQHO39 - New Infill Development
- Objective SPQHO43 - Contemporary and Innovative Design Solutions”.

#### Chapter 4 - Community Infrastructure and Open Space

- Objective CIOSO17 – Educational Infrastructure
- Objective CIOSO18 – Sites for Primary and Secondary Schools
- Objective CIOSO19 – Additional Schools

#### Chapter 5 - Climate Change

- Policy CAP12 - Climate Action Energy Statements
- Objective DMSO261 - Climate Action Energy Statements

#### Chapter 14 - Development Management Standards

- Objective DMSO1 - Screening for Appropriate Assessment
- Objective DMSO2 - Screening for Environmental Impact Assessment
- Objective DMSO5 - Design Statement
- Objective DMSO4 – Key Principles to consider in the achievement of healthy placemaking.
- Table 14.3 – Brownfield Opportunities and Regeneration
- Table 14.4 – Infill Development
- Section 14.6 - Design Criteria for Residential Development in Fingal
- Objective DMSO19 - New Residential Development
- Objective DMSO20 - Schedule of Accommodation
- Objective DMSO21 - Floor Plans for Residential Development
- Section 14.8 Housing Development/Standards
- Section 14.8.1 Floor Areas
- Section 14.8.2 Separation Distances
- Objective DMSO26 - Separation Distance between Side Walls of Units
- Section 14.8.3 Private Open Space
- Objective DMSO27 - Minimum Private Open Space Provision
- Objective DMSO52 - Public Open Space Provision

- Objective DMSO51 - Minimum Public Open Space Provision
- DMSO59 - Small Areas of Open Space
- Objective DMSO64 - Design of Open Space
- Table 14:12: Recommended Quantitative Standards
- Objective DMSO56 - Proximity of New Residential Schemes to Parks
- Objective DMSO239 - Refuse Storage Areas
- Section 14.17.2.1 of the Development Plan addresses bicycle parking and residential development.
- Objective DMSO109 - Bicycle Parking
- Table 14.19 outlines car parking standards.
- Sections 14.17.8, 14.17.9 and 14.17.10 address accessible car parking, motorcycle parking and EV Parking
- Objective DMSO202 - SuDS
- Objective DMSO203 - FCC SuDS Guidance Document
- Objective DMSO205 - Surface water management plans

#### Chapter 10 – Heritage, Culture and Arts

- Objective HCAO9 – Archaeology in the Landscape

#### Chapter 11 - Infrastructure and Utilities

- Section 11.5.2: Surface Water and Flood Risk Management

Sheet 6 – Lusk-Rush 2023 – 2029 (Sheet 6A).

#### Appendices

- Appendix 11 (SuDS Guidance Document)

## 5.2. National Planning Framework

- 5.2.1. The NPF provides an overarching policy and planning framework for the social, economic and culture development of the country. An important element of the growth strategy, intrinsic to the NPF, is securing compact and sustainable growth as

it offers the best prospects for unlocking regional potential. The preferred approach for compact development is one which focuses on reusing previously developed 'brownfield' lands and development of infill sites and buildings. To this end the NPF requires at least 30% delivery of all new homes in settlements (outside of the 5 cities) to be within the existing built up footprint (NPO 3(c)).

5.2.2. I reference the following:

- National Policy Objective 13 *"In urban areas, planning and related standards, including in particular building height and car parking will be based on performance criteria that seek to achieve well-designed high-quality outcomes in order to achieve targeted growth. These standards will be subject to a range of tolerance that enables alternative solutions to be proposed to achieve stated outcomes, provided public safety is not compromised and the environment is suitably protected"*.
- National Policy Objective 33 *"Prioritise the provision of new homes at locations that can support sustainable development and at an appropriate scale of provision relative to location"*.
- National Policy Objective 35 *"Increase residential density in settlements, through a range of measures including reductions in vacancy, reuse of existing buildings, infill development schemes, area or site-based regeneration and increased building heights"*.

### **5.3. Regional Spatial and Economic Strategy (RSES) - Eastern and Midland Regional Assembly (EMRA)**

- 5.3.1. The RSES sets out the strategic framework for the economic and spatial development of the Eastern and Midland Region up to 2031. The primary objective of the RSES is to support more sustainable settlement patterns that focus on compact growth, makes the most efficient use of land and infrastructure, and takes an integrated approach to development that provides employment opportunities and improvements to services alongside population and residential growth.
- 5.3.2. Lusk is indicated as being located within a self-sustaining town, and therefore, RPO 4.83 is of relevance, *"to support the consolidation of the town and village network to*

*ensure that development proceeds sustainably and at an appropriate scale, level and pace in line with the core strategies of Development Plans”.*

#### **5.4. Ministerial Guidelines**

##### **5.4.1. Section 28 Guidance**

- Sustainable Residential Development and Compact Settlements Guidelines for Planning Authorities (2024, DoEHLG).
- Guidelines for Planning Authorities on Urban Development and Building Heights (2018).
- Urban Design Manual - a Best Practice Guide (2009, DoEHLG).
- Appropriate Assessment of Plans and Projects in Ireland - Guidance for Planning Authorities (2009).

##### **5.4.2. Other Relevant Guidance**

- Design Manual for Urban Roads and Streets (2013, DoTTS).
- Identification and Suitability Assessment of Sites for Primary Schools, 2nd Edition, January 2012, Rev. 1 September 2019 by Department of Education and Skills.

#### **5.5. Natural Heritage Designations**

5.5.1. The subject site is not located within a designated European Site. However, the nearest designated sites at a distance of approximately 1.8 km are:

- Rogerstown Estuary SPA (site code: 004015).
- Rogerstown Estuary SAC (site code: 000208).

#### **5.6. EIA Screening**

5.6.1. I refer the Board to the completed Form 1 and Form 2 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 first party appeal has been received by the applicant's agent against the decision of Fingal County Council to refuse permission under Reg. Ref. F24A/0318E. The appeal includes the following revised plans and reports, in response to the Planning Authority's reason for refusal, for consideration of the Board:

- Drawing No. 2312-PA1-010 Rev A– Site Layout Plan.
- Submission prepared by DBFL Consulting Engineers.
- Submission prepared by Gannon Landscape Architects.

6.1.2. The revised plans include the following amendments:

- The previously permitted terrace of 8 no. dwellings V1 18 – V2 11 has been amended to include a terrace of three dwellings i.e. V1 18, V 17 and V1 16, and a terrace of five dwellings i.e. V1 15, V 14, V 13, V 12 AND V2 11.
- This has resulted in a reduced rear garden length from 6.5 metres to 6.3 metres and 6.6 metres to 6.4 metres, to the dwellings to the southern boundary of the site.
- The private open space serving the dwellings 19, 18, 17, 14, 13, 12 and 11 has also been reduced.
- The open private open space serving dwellings 16 and 15 has increased.
- The proposed dwelling V2 11 is also closer to the eastern site boundary with the R127.
- The separation distance within the site i.e. between the terrace of dwellings H2-6 – V3 10, has also increased from 18.7 metres and 19.5 metres, respectively to 18.9 metres and 19.7 metres.

6.1.3. The appeal includes a detailed report on the local authority decision, including location and site description and planning history and can be summarised as follows:

- In response to reason for refusal 1 the appellant states:

- The proposed residential development is permitted in principle under the zoning objective pertaining to the subject lands.
- In instances where conflict arises between the zoning and a map based local objective the land use zoning should be taken as the overriding and primary planning perspective.
- Precedent examples been given which indicate that land use zoning maps should take precedence over conflict in local objectives.
- The lands are under private ownership and the applicant has been actively developing the surrounding area into a residential community complete with retail and community amenities.
- The local map based objective was introduced in 2005 to potentially build a school on site there has been no initiative from the Department of Education to acquire the land for this purpose.
- Consequently, this has led to the sterilization of privately owned land and that is appropriately zoned and serviced.
- This obstructs the much-needed housing provision in Lusk.
- The placement of the map is subjective for school is deemed unnecessary due to the recent construction of a new school on the northern side of the R127.
- The site in question is too small and insufficient for the provision of educational facilities not meeting the minimum criteria set out and with no provision for future expansion and limited options for building orientation to maximize solar gain or recreational facilities as indicated within the site suitability assessment conducted by the applicant as part of the planning application.
- The site appears as the final piece to complete a new residential community development within the ring road and Lusk east.
- Currently there is little zoned land available for additional housing in Lusk.
- The census 2016 was utilized for population projections and housing demand estimates across Development Plans and this has resulted in a shortfall of population growth for Lusk.



- In the context of the strong demand for housing and the unavailability of zoned land in Lusk, the subject site is now being put forward for residential development.
- The primary school demand assessment for Lusk is based on the current Development Plan which utilized census 2016 data for demand estimation this data is now outdated and no longer relevant.
- Volume of traffic associated with a school development at this location would give rise to issue Traffic Safety concerns.
- The potential for any level drop off or pick up activity occurring on the adjoining R127 adjacent to the school gives rise to obvious road safety concerns – this is further referenced in the Engineering report submitted as part of the appeal.
- The surrounding conditions including residential developments and the R127 to the east make the site impossible to establish the required clean air zones for school.
- There is potential for the existing school in the area to expand further to accommodate additional students in the area. This option is deemed more feasible for the Department of Education compared to initiating a new school development – this is further referenced in the Engineering report submitted as part of the appeal.
- In response to reason for refusal 2 the appellant states:
  - An overall quantum of 0.1026ha public open space has been provided – forming 14.4%.
  - It is proposed to provide Class 2 open space with the remainder to be provided as Class 1 open space within Rathmore Park and Orlynn Park, which are 800m approx. from the site.
  - The appellant refers to Section 14.13.2 of the Development Plan and Objective DMSO53 in relation to open space requirement.
  - Policy Objective 5.1. of the Sustainable Residential Compact Guidelines, 2024, in relation to open space requirement and site constraints is noted.

- The limited area of the site makes it difficult to achieve a viable and balanced residential development.
- Incorporating SUDs features further reduces the available space for public opens areas.
- From a quantitative perspective and noting Objectives CIO38 and DMSO51, the reason for refusal is acknowledged given the limited size of the site and its location as an infill site, constrained by recent development and a major roadway it is not feasible to allocate 0.22ha for open space on the site.
- Considering the infill nature of the site and the specific constraints a more adaptable approach to open space should be warranted.
- The pocket park serves multiple functions and is further complimented with the peripheral narrow open space.
- The proposed landscape design provides high quality open space.
- An open space zone of 214 sq. m. is designated to the northwest intended for landscaping and SUDs purposes.
- It is envisaged that the open space will be taken in charge, and the appellant would welcome a condition in this regard.
- The ESB substation does not encroach on the area of open space nor is it visible from the proposed public open space and is screened. Should it be deemed necessary, this could be re-located by way of condition.
- Other elements of the planners' report addressed in the appeal:
  - Block of 8 No. Terraced Units – The arrangement of the terraced units has been carefully planned to break the monotony of a flatly continuous roofline along the southern side of the site by introducing a gap between unit 15 and unit 16, in addition to a variety of materials, which can be agreed by way of condition. There is no outward view from the site looking south and there is no protected view.
  - The southern and eastern boundary treatment – The boundary would be a shared boundary and consents from adjoining landowners would be required to increase the height of the existing wall. The proposal consists of a new timber screen on the development side of the existing wall, which

will be natural and aesthetically pleasing and will allow light through whilst increasing privacy and can be constructed from the appeal site.

- Location of Hedging – the combination of an estate rail and hedging provides for a barrier to the natural open space while maintaining passive surveillance. While a boundary to the pocket park can be provided the intention by design was to maintain a natural and unincorporated access to the site so the park reads as a public park.
- Trees on Grass Verge – The trees referred to are beyond the site boundary to the east, on public lands, with no intention to remove these trees. They will be protected during construction. A tree bond or similar condition could be included.
- Unit Mix – A demographic assessment of Lusk has been carried out which indicates that Lusk is predominately characterised by families and the existing housing stock mainly consists of houses. The appellant is of the opinion that the proposed housing mix is appropriately responsive to the context of the development and the masterplan area.

## **6.2. Planning Authority Response**

6.2.1. Report received 25<sup>th</sup> July 2024, confirming that the Council has no further comment to make. The Planning Authority requests that An Bord Pleanála upholds the decision of the Planning Authority to refuse permission.

6.2.2. In the event that this appeal is successful, provision should be made in the determination for applying the following:

- A financial contribution and/or provision for any shortfall in open space and/or any Special Contribution required in accordance with Fingal County Council's Section 48 Development Contribution Scheme.

## **6.3. Observations**

None received.

#### **6.4. Further Responses**

None received.

#### **7.0 Assessment**

7.1. As part of the grounds of appeal, the appellant submitted the following revised plans, and documents in response to the Planning Authority's reasons for refusal of planning permission and the commentary of the planner within their assessment, for the consideration of the Board:

- Drawing No. 2312-PA1-010 Rev A– Site Layout Plan.
- Submission prepared by DBFL Consulting Engineers.
- Submission prepared by Gannon Landscape Architects.

7.2. The appellant has requested that the revised plans be read in conjunction with the original reports submitted with the planning application. It is noted that the revised plans submitted with the appeal introduce no new elements or issues which may be of concern to third parties in the context of the proposed development, they result in the following amendments to the original proposal:

- The previously permitted terrace of 8 no. dwellings V1 18 – V2 11 has been amended to include a terrace of three dwellings i.e. V1 18, V 17 and V1 16, and a terrace of five dwellings i.e. V1 15, V 14, V 13, V 12 AND V2 11.
- A reduced rear garden length serving the dwellings to the southern site boundary from 6.5 metres to 6.3 metres and 6.6 metres to 6.4 metres.
- Reduction in the rear private open space serving the dwellings 19, 18, 17, 14, 13, 12 and 11.
- The open private open space service dwellings 16 and 15 has increased.
- The proposed dwelling V2 11 is positioned closer to the eastern site boundary with the R127.
- The separation distance within the site i.e. between the terrace of dwellings H2-6 – V3 10, has increased from 18.7 metres and 19.5 metres, respectively to 18.9 metres and 19.7 metres.

- 7.3. Accordingly, this assessment is based on the plans and information received by Fingal County Council on 9<sup>th</sup> April 2024, and the further plans and particulars received by the An Bord Pleanála on 26<sup>th</sup> June 2024.
- 7.4. The Board may wish to consider the alternative proposal submitted to An Bord Pleanála on 26<sup>th</sup> June 2024, and/or possibly could consider the alternative proposal by way of a condition.
- 7.5. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:
- I. Zoning and Development Plan Compliance – Reason for Refusal 1
  - II. Density and Unit Mix
  - III. Public Open Space – Reason for Refusal 2
  - IV. Layout, Design and Visual Impact
  - V. Residential Amenity
  - VI. Appropriate Assessment, and
  - VII. Other Matters.
- 7.6. **Zoning and Development Plan Compliance – Reason for Refusal 1**
- 7.6.1. The first reason for refusal relates to a map based local objective pertaining to the site for a ‘proposed primary school’, within the Development Plan and in the absence of the provision for a primary school as part of the proposed development, the proposed would contravene the map based local objective and would also contravene objectives CIO18 and CIO19 relating to education facilities.
- 7.6.2. At the outset, I note that the subject site is located within an established residential area and is zoned ‘RA’ Residential Area with an objective “to ensure the provision of high quality new residential environments”. Accordingly, I note that residential development is permitted in principle under the zoning objective, and therefore the principle of residential development is acceptable on this site.
- 7.6.3. However, as highlighted in the reason for refusal, I reference Map Sheet 6A of the Development Plan, which indicates that the appeal site is subject to a specific objective for a proposed primary school ‘PS’. Accordingly, I consider that Objective

CIOSO17 *“Educational Infrastructure Encourage the continued use and possible intensification of existing educational infrastructure where appropriate. Facilitate the development of new schools, the re-development of existing schools and extensions planned as part of the Government’s School Building Programme”*. Objective CIOSO18 *“Sites for Primary and Secondary Schools Identify sites for primary and secondary schools in consultation with the Department of Education based on future population growth projections and in accordance with the Core Strategy and Settlement Hierarchy”*, and Objective CIOSO19 *“Additional Schools Facilitate the development of additional schools, including Gaelscoileanna and Gaelcholáistí, at both primary and secondary level in a timely manner in partnership with the Department of Education and Skills and/or other bodies”*, to be of relevance to the appeal site.

- 7.6.4. The appellant states that residential development is permitted under the zoning objective, and the conflicting map based local objective does not override this. The appellant also states that the site is unsuitable for a school due to size, access and potential traffic implications. Reference is made to an existing school to the north of the R127 i.e. ‘Lusk Community College and Rush and Lusk Educate together’, which according to the appellant meet the demands of the area. It is also argued that there is a demand for housing in the area and to refuse permission would sterilise these lands.
- 7.6.5. I also note that the planning application accompanies a Site Suitability and School Demand Assessment Report, which concludes that the site does not meet the criteria set out within the Technical Guidance Document TGD - Identification and Suitability Assessment of Sites for Primary Schools, stating that the site is below the minimum requirement for a primary school building. Reference is also made to a post primary school; however, this is not considered relevant noting the objective pertains to the provision of primary school. The appellant also considers that the site is not appropriate for a school from a traffic safety perspective. This is also reiterated by the engineering report accompanying the appeal submission.
- 7.6.6. Having regard the Technical Guidance Document TGD - Identification and Suitability Assessment of Sites for Primary Schools (January 2012) as prepared by the Department of Education, I note that Table 1 – School Site Area Analysis states that the recommended site area in hectares for a two storey school building comprising 4-8 classrooms is 0.71 hectares. The site area as indicated on the planning

application form, submitted to the planning authority on 9<sup>th</sup> April 2024, 'Part 11: Site Area' is indicated as 0.714 hectares. Accordingly, the site area complies with the required site area for a two storey school building comprising 4-8 classrooms. Other issues in relation to access, traffic, orientation, and layout of a proposed school would be subject to a design proposal and a full assessment of any subsequent school development on this site by way of a planning application for same and are not subject to assessment as part of this appeal.

- 7.6.7. Having regard to the Core Strategy within the Development Plan, and the estimated population projection for Lusk, I concur with the appellant in respect to the residential demand for the area, however I also consider that this will also have a knock on effect in respect to the demand for community facilities, including the demand for school places and new schools in the area as demonstrated by the school demand report. The planners report also states that the "need for future sites for education facilities in Fingal was reviewed as part of the preparation of the Development Plan 2023 – 2029 and the local objective on these lands was maintained in place arising from that review".
- 7.6.8. Notwithstanding the presence of the 'Lusk Community College' and 'Rush and Lusk Educate together', in the wider vicinity and the potential for future expansion of these school sites, I note the projected population growth for the area and the need for community facilities including schools. I also note that no correspondence has been received from the Department of Education confirming that there is no longer a requirement for these lands for educational use.
- 7.6.9. The appellant has also referenced precedent cases in relation to a proposal contravening the zoning objective, however all appeal cases will be assessed and determined on their own merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development.

#### Conclusion

- 7.6.10. Based on the estimated population growth for the area, the site area, the information submitted, both as part of the planning application and the appeal, and the lack of confirmation from the Department of Education in relation to the need for these lands, I consider that the designation for a school at this site to be appropriate, despite the residential zoning objective pertaining to these lands. Therefore, the proposal consisting of residential development would not be acceptable on this site

and would conflict with the map based objective 'PS' and with the associated Development Plan objectives pertaining to education namely Objective CIO17 - Educational Infrastructure, Objectives CIO18 - Sites for Primary and Secondary Schools and CIO19 - Additional Schools. Therefore, I concur with the planning authority and recommend that permission be refused in this instance.

## **7.7. Density and Unit Mix**

### Density

- 7.7.1. The appeal site is located within an existing residential development within Lusk and is defined as a self-sustaining town in the Fingal Development Plan and I consider Lusk to be under the category of small and mediums sized town albeit on the town edge. Furthermore, the Development Plan states that *"c. 20% of the units to the other towns and villages within the Metropolitan area works towards the RSES target of 30% for other metropolitan settlements. Again, on consideration of the zoned lands within the Metropolitan towns and villages and the existing growth rates, it is considered that this allocation is appropriate for the towns and villages"*.
- 7.7.2. I also note the Sustainable and Compact Settlements | Guidelines for Planning Authorities, (2024), states in relation to areas and density ranges in small/medium town edge that *"The edge of small to medium sized towns are the lower density housing areas constructed around the centre, while urban extension refers to greenfield lands at the edge of the built-up area that are zoned for residential or mixed-use (including residential) development. It is a policy and objective of these Guidelines that densities in the range 25 dph to 40 dph (net) shall generally be applied at the edge of small to medium sized towns"*.
- 7.7.3. Notwithstanding the above assessment in respect to the map based objective 'PS' on the site, the proposal will represent an overall density of 35 units/ha, which would be an appropriate density for this site to ensure the efficient use of land and promotes compact consolidated development, if a residential scheme was to be forthcoming in the future, should this site not be required by the Department of Education as a primary school site.

### Unit Mix



- 7.7.4. The planners report considers that the proposed development would benefit from a greater variety of unit type in line with the Development Plan. The appellant states that having regard to the demographic assessment carried out that there is a demand for housing and the proposal provides for a balanced mix and type of dwelling. Having regard to the infill nature of the site, its size and location within a residential development, I concur with the appellant that the provision and mix of housing on this site to be acceptable if a residential scheme was to be forthcoming in the future, should this site not be required by the Department of Education as a primary school site.

## **7.8. Public Open Space – Reason for Refusal 2**

- 7.8.1. The second reason for refusal relates to the inadequate and insufficient provision and layout of public open space would not provide a satisfactory standard of development and amenity for future residents, which would be contrary to Objectives CIO38, DMSO51, DMSO64 and DMSO17 of the Fingal Development Plan 2023-2029, in relation to open space.

### Private Open Space Provision

- 7.8.2. While not raised as a specific issue, I note that in terms of private amenity space to serve the proposed dwellings, the site plan indicates that each dwelling will be served by private amenity space. While the revised site plan submitted by way of the appeal reduces the quantum of private amenity spaces to serve several dwellings, the private amenity space proposed is in accordance with the County Development Plan requirements.

### Public Open Space Provision

- 7.8.3. The Parks and Green Infrastructure Department set out that the public open space proposals are not acceptable in terms of size, layout and dominance of SUDs and therefore would contravene Objectives CIO38, DMSO51, DMSO64 and DMSO17 of the Development Plan, accordingly permission was refused in this regard.
- 7.8.4. The proposed public open space is positioned to the north of the site and adjoins the access roadway with part of the open space positioned to the side of dwellings 1, 6 and 25 and is centrally located within the scheme, with a stated area of 1026 sq. m.

A second pocket park is proposed, also to the north of the site which has a stated area of 214 sq. m.

- 7.8.5. The appellant open space provision of open space accounts to 0.1026ha and 14.4% of the site area as Class 2 open space, with Class 1 open space provided within Rathmore Park and Orlynn Park which are within walking distance of the proposed scheme.
- 7.8.6. I concur with the local authority in respect to the size (214 sq. m.) and position of pocket park 2 within the scheme and would also not consider that this area could be considered as open space or included in the overall open space quantum as proposed. The planners report refers to this space as an environmental space. As such, this area will not be included as part of my assessment of the open space. The appellant has stated that this area is primarily intended for SUDs and landscaping purposes.
- 7.8.7. I reference the Sustainable and Compact Settlements | Guidelines for Planning Authorities, (2024), Section 5.3.3 in relation to Public Open Space which states that *“Public open spaces in residential schemes refers to the open spaces that form part of the public realm within a residential development. This is distinct from a public park. Open spaces provide for active and passive recreation, nature conservation, pedestrian and cycle connection and provide an important visual break between streets and buildings. All residential developments are required to make provision for a reasonable quantum of public open space. There is a need to focus on the overall quality, amenity value and biodiversity value of public open spaces. The spaces should integrate and protect natural features of significance and green and blue infrastructure corridors within the site and should support the conservation, restoration and enhancement of biodiversity. The public open spaces should also form an integral part of the design and layout of a development and provide a connected hierarchy of spaces, with suitable landscape features, including seating and provision for children’s play”*.
- 7.8.8. As noted in the above guidance, public open space provided as part of new developments should form an integral part of the overall design and layout approach and should be suitably proportioned and provide high quality amenity value for residents. I am satisfied that the position of the open space to be suitable within the proposed development.

- 7.8.9. Notwithstanding Objectives CISO38 and DMSO51 of the Plan, which relate to the minimum public open space provision based on population. I also reference Table 14.12: Recommended Quantitative Standards of the Development Plan and Objective DMSO52 – Public Open Space Provision, that *“Public open space shall be provided in accordance with Table 14.12”*. The Development Plan states that new residential development on greenfield sites/LAP lands should provide 12% - 15% minimum of the site area as open space. The Plan also states that *“it is the intention of the Council, however, to ensure, except under exceptional circumstances, public open space provision exceeds 12% of a development site area”*.
- 7.8.10. I also reference that Policy and Objective 5.1 of the Sustainable and Compact Settlements | Guidelines for Planning Authorities, (2024), states *“It is a policy and objective of these Guidelines that statutory development plans include an objective(s) relating to the provision of public open space in new residential developments (and in mixed-use developments that include a residential element). The requirement in the development plan shall be for public open space provision of not less than a minimum of 10% of net site area and not more than a minimum of 15% of net site area save in exceptional circumstances. Different minimum requirements (within the 10-15% range) may be set for different areas. The minimum requirement should be justified taking into account existing public open space provision in the area and broader nature conservation and environmental considerations”*.
- 7.8.11. The appellant states that Objective DMSO53 of the Development Plan allows flexibility in open space provision, permitting financial contributions in lieu of open space where appropriate. The appellant also notes that site constraints in respect of size and location as an infill site surrounded by developments and a major roadway which poses challenges for meeting open space requirements. Notwithstanding, the proposed development provides for 0.1026 ha. of open space which equates to 14.4% of the site. The appellant also states that the open space is designed to adhere to Healthy Placemaking principles and Fingal's Play Policy, serving as a community hub and playground accessible to all residents, compliant with accessibility standards. It features native planting, durable materials, and recreational amenities such as benches and play surfaces.
- 7.8.12. The appellant refers to the availability of Class 1 Open Space in the adjoining Rathmore Park and Orlynn Park, which are some 800 metres of the site. Following

site inspection, I note that there are other pocket parks within the overall residential scheme, within a short distance from the appeal site.

- 7.8.13. Concerns have also been raised by the Parks and Green Infrastructure Department in respect to the extent of SUDs features proposed in the area open space (Pocket Park 1) and it is considered that the combination of swale and pond on a small area of open space would need further consideration in terms of usability and safe access of grass maintenance machinery. I would concur that given the size of the open space area that the extent of SUDs proposed at this location appears to dominate the open space and this should be reconsidered. However, I am satisfied that this issue could be addressed by way of a condition, or a future application on the site, should this site not be required by the Department of Education as a primary school site and should not form part of the reason for refusal.

Conclusion:

- 7.8.14. While the quantum of open space is below the required target minimum of 15%, I reference the central location and quantum of open space proposed to serve the development, the infill nature of the site and the location of additional open space areas immediately adjoining the subject site. Therefore, I am generally satisfied that the proposed open space provision to serve the appeal site to be acceptable and in accordance with Objective DMSO53 of the Development Plan and Objective 5.1 of the Sustainable and Compact Settlements | Guidelines for Planning Authorities, (2024).
- 7.8.15. However, as noted by the appellant in their appeal response, I would recommend the inclusion of a condition in relation to the shortfall in open space provision to serve the proposed development, and for the applicant to provide details of the proposed playground, should this site not be required by the Department of Education as a primary school.

**7.9. Layout, Design and Visual Impact**

- 7.9.1. The planners report expressed concern in relation to the block of 8 no. terraced dwellings along the southern boundary of the site, which would create a ridged urban block with a dominant roofline.

- 7.9.2. As part of the appeal, it is argued that the arrangement of the terrace has been planned to reflect the site topography and integrates into the landscape and has no impact on views. Nevertheless, a revised site plan has been submitted as part of the appeal (drawing 2312-PA1-010 Revision A), which amends the proposed terrace of 8 no. dwellings to provide a separation between unit 15 and unit 16 and a terrace of three dwellings and a terrace of five dwellings. The appellant also states that this terrace can include a variety of materials and finishes, which can be addressed by way of condition.
- 7.9.3. While the principle of the proposed layout is acceptable, I welcome the revised layout, which includes the proposed gap between dwelling Nos. 15 and 16. The revised site layout breaks the continued roofline of the terraced dwellings to the south and provides a visual break, which is welcomed. As such, I consider that the revised layout submitted as part of the appeal (drawing 2312-PA1-010 Revision A) is a more appropriate layout for this site.
- 7.9.4. The proposed dwellings are two storeys in height, with pitched roofs and varying house types within each terrace, bookend units are located at the end of each terrace with perpendicular front entrances, which adds visual interest and passive surveillance within the scheme. The proposed materials include render, brick with varying elevational treatments comprising bay windows and projecting entrances.

#### Conclusion

- 7.9.5. Overall, I am satisfied that the principal house design and the revised layout of the scheme (presented by way of the appeal, drawing 2312-PA1-010 Revision A) is acceptable, accords with the existing built form of the area and will not detract from the visual amenity of the area, should this site not be required by the Department of Education as a primary school.

#### **7.10. Residential Amenity**

- 7.10.1. The separation distances within the development exceed the 16metre requirement of the Sustainable and Compact Settlements | Guidelines for Planning Authorities, (2024) and given the layout of the dwellings no undue overlooking or overshadowing would occur within the scheme.

7.10.2. In relation to overbearing, the layout of the scheme provides for adequate separation to the rear of the adjoining dwellings to the south and west of the site, in particular. There are two instances, at No. 15 and No. 18 (to the southern terrace), where a separation distance of 8.3 metres (as per drawing 2312-PA1-010 Revision A) is proposed to the side gable walls of the adjoining dwellings at Rathmore Court. In these instances, the rear garden serving the proposed dwelling No. 18 is a corner plot, with a stated area of 144 sq. m. While No. 15 has a stated area of 68 sq. m. and is an end of terrace dwelling. While the adjoining dwellings at Rathmore Court will be visible given the size of the rear gardens and the aspect of the dwellings, I am satisfied that this arrangement would be acceptable and would not detract from the residential amenity of these dwellings. There are also no first floor habitable windows fronting onto these rear gardens.

#### Conclusion

7.10.3. Overall, I am satisfied that the proposed development would not result detract from the residential amenity of the scheme or surrounding area in terms of overlooking, overshadowing, or overbearing impacts, should this site not be required by the Department of Education as a primary school.

### **7.11. Appropriate Assessment**

7.11.1. I have considered the application for the construction of 25 no. residential units (24 no. 3-bed houses and 1 no. 4-bed houses), all associated site works and services, in light of the requirements S177U of the Planning and Development Act 2000 as amended.

7.11.2. The subject site is located an approximate distance from the following Natura 2000 Sites:

- 1.8km from the Rogerstown Estuary SPA (site code: 004015).
- 1.8km from the Rogerstown Estuary SAC (site code: 000208).

7.11.3. As noted in the forgoing, the proposed development comprises the construction of 25 no. residential units and all associated site works, including ancillary parking, bin and bicycle stores, vehicular access off Loughcommon Court, open space, boundary treatments, public lighting and 1 no. ESB sub-station, at this location.

7.11.4. No nature conservation concerns were raised in the planning appeal.

7.11.5. 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 25 no. dwellings, 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 submitted by the application and the determination by Planning Authority.

7.11.6. 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.

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

## **7.12. Other Matters**

### **7.12.1. EBS substation**

The planning authority also expressed concern in relation to the position of the ESB substation and referenced Objective DMSO17 – Location of New Utility Structures, in the second reason for refusal. I would concur with the planner's assessment in relation to the location of the ESB substation which is adjacent or forward of the front building line of buildings or on areas of open space, to be contrary to Objective DMSO17. However, as highlighted in the appeal, I am satisfied that this issue could be addressed by way of a condition, or a future application on the site, should this site not be required by the Department of Education as a primary school site and should not form part of the reason for refusal.

### **7.12.2. Boundary treatment, Trees and Hedging**

As part of the appeal the appellant has clarified the proposed boundary treatments, trees and hedging proposed within the site. I am satisfied that the boundary treatments as proposed are acceptable and this issue could be addressed by way of

a condition, or a future application on the site, should this site not be required by the Department of Education as a primary school site.

#### 7.12.3. Part V

In relation to Part V agreements, I note that the planners report notes that the Part V housing obligation was previously satisfied under the previous planning application on site.

### 8.0 **Recommendation**

I recommend that planning permission should be refused for the proposed development, as presented and amended by way of the revised plans and particulars submitted to An Bord Pleanála on 26<sup>th</sup> June 2024 with the first party appeal, for the reason and considerations set out below.

### 9.0 **Reason and Considerations**

- 9.1. Having regard to the Map Based Local Objective for a "Proposed Primary School (PS)" within the Fingal Development Plan 2023-2029 pertaining to the site, it is considered that the proposed development would fail to make provision for a primary school, and in the absence of any information in relation to the requirement of this site for a primary school, the proposed development would therefore contravene the map based local objective, would be contrary to Objective CIO17 – "Educational Infrastructure", Objective CIO18 "Sites for Primary and Secondary Schools", and Objective CIO19 "Additional Schools" of the Fingal Development Plan 2023-2029 and would thereby be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



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Emma Nevin  
Planning Inspector

21<sup>st</sup> January 2025

## Appendix 1 - Form 1

### EIA Pre-Screening

[EIAR not submitted]

<b>An Bord Pleanála Case Reference</b>	320029-24		
<b>Proposed Development Summary</b>	Construction of 25 no. residential units (24 no. 3-bed houses and 1 no. 4-bed houses) in end-terraced and mid-terraced houses, all two storeys in height, with external bin stores, car parking, and bike stores to front of units. The development will provide for a proposed vehicular access off the Loughcommon Court, provision of public open space, landscaping, boundary treatment, public lighting, 1 no. ESB sub-station, and all associated site and engineering works necessary to facilitate the development.		
<b>Development Address</b>	Loughcommon Court, Lusk, Co. Dublin		
<b>1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?</b> (that is involving construction works, demolition, or interventions in the natural surroundings)		<b>Yes</b>	X
		<b>No</b>	
<b>2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class?</b>			
<b>Yes</b>		N/A	
<b>No</b>	X		Proceed to Q.3
<b>3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?</b>			
		<b>Threshold</b>	<b>Comment (if relevant)</b>
<b>No</b>		N/A	
<b>Yes</b>	X	Class 10 Infrastructure Projects (b) (i)	25 residential units
			Proceed to Q.4

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

## Appendix 2 - Form 2

### EIA Preliminary Examination

<b>An Bord Pleanála Case Reference</b>	ABP-320029-24	
<b>Proposed Development Summary</b>	Construction of 25 no. residential units (24 no. 3-bed houses and 1 no. 4-bed houses) in end-terraced and mid-terraced houses, all two storeys in height, with external bin stores, car parking, and bike stores to front of units. The development will provide for a proposed vehicular access off the Loughcommon Court, provision of public open space, landscaping, boundary treatment, public lighting, 1 no. ESB sub-station, and all associated site and engineering works necessary to facilitate the development.	
<b>Development Address</b>	Loughcommon Court, Lusk, Co. Dublin	
<p><b>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</b></p> <p><b>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</b></p>		
	<b>Examination</b>	<b>Yes/No/ Uncertain</b>
<p><b>Nature of the Development.</b> Is the nature of the proposed development exceptional in the context of the existing environment.</p> <p>Will the development result in the production of any significant waste, emissions, or pollutants?</p>	<p>The construction of 25 houses, and all associated site works, new road access and associated site works on residential zoned land. However, the proposal is not considered exceptional in the context of the existing urban environment.</p> <p>The proposal will be connected to the existing system.</p>	No
<b>Size of the Development</b>	Site measuring 0.714 ha. The total combined proposed floor	No

<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>area for the residential scheme will be 2,863 sq. m. The proposal is not considered exceptional in the context of the existing urban environment.</p> <p>No.</p>	
<p><b>Location of the Development</b></p> <p>Is the proposed development located on, in, adjoining, or does it have the potential to significantly impact on an ecologically sensitive site or location, or protected species?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area, including any protected structure?</p>	<p>The appeal site is note located within any Natura site. The closest such sites are at an approximate distance of 1.8km:</p> <ul style="list-style-type: none"> <li>• Rogerstown Estuary SPA (site code: 004015).</li> <li>• Rogerstown Estuary SAC (site code: 000208).</li> </ul> <p>No other nearest European site is located above 1km from the site and therefore can be excluded in terms of the potential for effects on other European sites during construction and operational phases of the proposed development.</p>	No
<b>Conclusion</b>		
<p>There is no real likelihood of significant effects on the environment.</p> <p>EIA is not required.</p>		

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

**Date:** 21<sup>st</sup> January 2025

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

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

(only where Schedule 7A information or EIAR required)