



An
Coimisiún
Pleanála

Inspector's Report PL-500170-DF-25

Development	Demolition of existing two storey 4 bedroom house and garage and the construction of two two-storey houses with separate vehicular access.
Location	Muire na dTonn, Bissetts Strand, Malahide, K36F512.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F25A/0331E
Applicant(s)	Mary & Dan Moynihan
Type of Application	Planning Permission
Planning Authority Decision	Refuse permission
Type of Appeal	First Party Normal Planning Appeals
Appellant(s)	Mary & Dan Moynihan
Observer(s)	Jason O'Toole
Date of Site Inspection	19 th June 2026
Inspector	Dan Aspell

1.0 Site Location and Description

- 1.1.1. The site comprises a detached dwelling known as Muire na dTonn, Bissetts Strand, Malahide. It is accessed from Bissetts Strand road. There is a garage to the rear of the site. The boundaries to the site generally comprise block walls. The roadside boundary comprises a wall and hedging.
- 1.1.2. Bissetts Strand is to the north. Across the road is Malahide Estuary. The 'Haven View' housing estate is to the south and west. No. 11 Haven View is adjacent to the west, and No. 12 is adjacent to the south. A gated vehicular access to two detached dwellings ('Creevelagh' and 'Keadeen') is adjacent the site to the east. There is a footpath along the road outside the site.

2.0 Proposed Development

- 2.1.1. The proposed development comprises demolition of the existing house and garage, and construction of two houses with separate vehicular access. The dwellings would be 2-storey and detached.
- 2.1.2. The application included an Appropriate Assessment (AA) screening report (17th April 2025); Demolition Justification Report; letters of authorisation; Planning Submission Engineering Report (10th April 2025); architectural drawings; and related information. The further information response included responses from the applicant's architect and engineer, and updated AA screening report (28th August 2025).

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Fingal County Council issued a notification to refuse permission for 1 no. reason, summarised as follows:
 - Reason: Applicant failed to demonstrate that surface water may be appropriately disposed of from this development in accordance with the requirements of the Development Plan. The surface water drainage proposal, specifically the treatment of pre-existing public surface water traversing the site would not be

acceptable as it would result in the creation of nature-based water measures within private land, specifically within the private rear gardens of the proposed dwellings. It is also considered that the outfall/overflow sewer required is problematic due to the proximity of the proposed dwelling and boundary wall. Proposal would therefore be prejudicial to public health and contrary to proper planning and sustainable development.

3.2. Planning Authority Reports

3.2.1. Planning reports: The Planner report at application stage is summarised as follows:

- Zoning: Proposal is acceptable in principle within the zoning;
- Demolition: Development Plan supports retention, refurbishment & infill. Existing house is of little architectural merit. Construction of additional house would require at least partial demolition of existing house. Proposal is acceptable;
- Layout, design, & impact on visual/residential amenity: Revised application makes minor design alterations; the layout has been revised, and elevations indicate a consistent ridge height relative to surroundings. Two options are presented. Applicant prefers higher floor level to give more flood protection. The applicant preferred option is more appropriate. There would be no overlooking or privacy impact. Proposal would not significantly impact residential amenity. Rear gardens are in excess of minimum requirements. Design, quality & layout comply with Development Plan Objective DMSO19. Visual & residential amenity is acceptable and complies with Objectives DMSO31 & DMSO32.;
- Transportation: Proposed access has been widened compared to existing and previously proposed. The maximum boundary wall height requirement has been incorporated. The Transport Section stated no objection subject to conditions;
- Parks: Proposal has been reviewed by the Parks & Green Infrastructure Division. The report received stated no objection subject to standard condition;
- EIA: No EIA required;
- AA: Site is approx. 20m from Malahide Estuary SAC and SPA. Report noted the submitted AA Screening Assessment. A 225mm surface water drain runs through the site and discharges to Malahide Estuary; the proposed houses

would discharge to this pipe and would be hydrologically linked to the Estuary. Report noted it is proposed to divert this pipe to accommodate the development. The submitted engineering report stated that it is proposed to drain the roofs only to the existing sea outfall with silt traps. Report noted that due to site constraints it is not viable to use soakaways as the required separation distances cannot be achieved. Permeable paving will be incorporated as part of the front driveway. The AA Screening report advised that the proposal is to connect to the existing surface water network which discharges to Malahide Estuary with the inclusion of silt trapping as a minor precaution and which has been considered at screening stage. The surface water discharge will not change significantly from the existing situation except minor reduction due to reduced surface area. Surface water outfall impact on protected sites can only be made once the proposed diversion of this sewer is deemed acceptable;

- Water Services: The Engineering Report sets out a surface water drainage rationale. The existing surface water outfall to the sea would be retained for roof water but no soakaways are proposed due to site constraints. Water Services advised SuDS features in the form of rainwater planters should be incorporated. Further issues relate to the diversion of the existing surface water sewer. Proposal in its current form is not acceptable. Further Information recommended;
- Planner Report in response to further information made the following points:
- FI Items 1-4: Applicant proposes a bioretention system to replace the 225mm surface water pipe traversing the site and discharging to the sea. It will be located across both rear gardens with a high-level overflow for extreme events. The driveway will have permeable paving and soft landscaping to the front and rear gardens and raingarden planters. Revised drawing no. 24020-C01-RevB is provided. A revised AA Screening report is submitted;
- FI Assessment: The Water Service Section advised that the revised surface water drainage will traverse the proposed private rear gardens and requires surface water to be pumped to an elevated level. It also stated that an outflow/overflow sewer will be retained as part of the proposal which is problematic due to the proximity to the proposed dwelling and boundary wall.

The Water Services report advised that the proposed drainage is unacceptable for these reasons and should be refused. The Planning Authority concurs.

Other Technical Reports:

- 3.2.2. Transportation: No objection subject to conditions (restrictions on interference of visibility envelopes and gates; repairs to road; relocation of services; and disposal of stormwater);
- 3.2.3. Parks: No objection in principle subject to conditions (detailed landscape plan, details of boundaries, and treatment of boundary wall).
- 3.2.4. Water Services: Two reports on file, summarised as follows:
- Report on application: The report stated that (a) the introduction of 90° bends is not acceptable; (b); the proximity of the diverted sewer to the side of House 1 (c.2m) is not acceptable; (c) the proximity of the diverted sewer and proposed boundary wall relative to each other is not acceptable, and that it was suggested that the wall be replaced with an alternative such as a fence or hedge. It also stated that notwithstanding the reduction in hard surfacing, appropriate SuDS features should be provided, and suggested rainwater planters.
 - Report in response to further information: The Water Services Department stated that the revised surface water drainage proposal, with specific regards to the treatment of the pre-existing public surface water sewer traversing the site, was not acceptable as the proposal would (a) result in the creation of nature-based surface water measures within private land, specifically within the private rear gardens of the two dwellings; (b) that the proposal would introduce the need to pump surface water to an elevated level; and (c) that the proposal would not negate the requirement for an outfall/overflow sewer which remains problematic with regards to its close proximity to the proposed new dwelling and boundary wall. Recommended refusal on these grounds.

3.3. Prescribed Bodies

- 3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Relevant Planning History

4.1. Subject site

4.1.1. Reg. Ref. F24A/0718: Planning permission refused by the Planning Authority in 2024 for demolition of the existing house and garage and construction of two houses with separate vehicular accesses, and landscaping, drainage, and all associated site works. The application was refused for 3 no. reasons, summarised as follows:

- 1: Failure to provide adequate separation distances between the houses and the existing surface water sewer on the site which would contravene Objective IUO5 of the Development Plan 2023-2029;
- 2: The design and excessive scale of the houses would be overbearing and visually intrusive within a sensitive landscape and out of character with the streetscape which would seriously injure the amenities of the area and contravene Objective DMSO31 of the Development Plan, and;
- 3: Having regard to the proximity to Malahide Estuary SAC and SPA, the Screening Statement is insufficient and contravenes Objective DMSO145 of the Development Plan.

4.2. Nearby sites:

4.2.1. None.

5.0 Policy Context

5.1. Relevant National & Regional Policy / Ministerial Guidelines

Sustainable Residential Development & Compact Settlements 2024 and Appendices
Nature Based Management of Urban Rainwater & Urban Surface Water Discharges,
A National Strategy (Dept. Housing, Local Government & Heritage, 2024).

National Biodiversity Action Plan 2023, including its Objectives and Targets

Regulation of Commercial Institutional Investment in Housing Guidelines for Planning Authorities 2023.

Nature-based Solutions to the Management of Rainwater and Surface Water Runoff in Urban Areas, Water Sensitive Urban Design, Best Practice Interim Guidance Document (Department of Housing, Local Government & Heritage, 2022).

Design Manual for Urban Roads & Streets (DMURS) 2019

Greater Dublin Regional Code of Practice for Drainage Works V.6, 2010:

- Section 3.8.2 of the Greater Dublin Regional Code of Practice ‘Location of Sewers & Manholes to be Taken in Charge’ states that: “*A minimum clear distance of three metres between the outside diameter of the pipe and all structures shall be maintained to allow for future access and maintenance of the pipeline. Foundations and basements of adjacent buildings should be designed to ensure that no extra loads are transferred to the pipeline*”.
- Section 6.1 of the Code of Practice states that “*No building may be constructed over the line of a public sewer; ... The Local Sanitary Authority requires a minimum clear distance of three metres to be maintained between sewers and all structures on site, including basement and foundations*”;
- Section 7.1 of the Code of Practice states that: “*Any diversion shall not adversely affect the hydraulic capacity or maintenance of the sewer*”;

Planning System & Flood Risk Management Guidelines 2009

Appropriate Assessment of Plans and Projects in Ireland Guidance for Planning Authorities 2009

Guidelines for Planning Authorities on Sustainable Residential Development in Urban Areas 2009 and Urban Design Manual A Best Practice Guide, 2009

Quality Housing for Sustainable Communities Best Practice Guidelines for Delivery Homes Sustaining Communities 2007

Greater Dublin Strategic Drainage Study 2005, and Regional Drainage Policies Technical Document Volume Two New Development March 2005

5.2. Development Plan

- 5.2.1. The site is zoned 'RS – Residential' in the Fingal County Development Plan 2023-2029:

Residential development

Objective SPQHO9 'Consolidated Residential Development'; Section 14.10.1; Objective DMSO19 'New Residential Development'; Objective DMSO31 'Infill Development'; & Objective DMSO32 'Infill Development on Corner/Side Garden Sites'

Drainage

Objective SPQHO30 'Rainwater Harvesting'

Objective IUO5 'Protection of Water and Drainage Infrastructure': "*Work in conjunction with Uisce Éireann to protect existing water and drainage infrastructure by protecting existing wayleaves and buffer zones around public water service infrastructure*";

Objective IUO8 'Taking in Charge or Private Drainage Infrastructure' and Objective DMSO216 'Taking in Charge of new Surface Water Infrastructure': "*Require that all new surface water infrastructure within public or private developments be constructed in accordance with the standards set out within the Greater Dublin Regional Code of Practice for Drainage Works, as amended, irrespective of the management and maintenance regime proposed for the development or whether or not the development is intended to be taken in charge, in full or in part (i.e. infrastructure shall be designed to taking in charge standards)*";

Section 11.5.2.1 'Nature-Based Surface Water Solutions through SuDS';

Policy IUP10 'Water Conservation and SuDS';

Objective IUO9 'Surface Water Drainage Systems': "*Maintain and enhance existing surface water drainage systems in the County and to require SuDS in new developments where appropriate, as set out in the Greater Dublin Strategic Drainage Study (Vol 2: New Development) / Greater Dublin Regional Code of Practice for Drainage Works*";

Objective IUO10 'Water Conservation and SuDS'; *"SuDS shall incorporate nature-based solutions and have regard to the objectives set out in Fingal's Guidance Document – Green/ Blue Infrastructure for Development, as amended (Appendix 11) and Nature Based Solutions to the Management of Rainwater and Surface Water Runoff in Urban Areas, Water Sensitive Urban Design Best Practice Interim Guidance Document (November 2021, DHLGH)";*

Objective IUO13 'Surface Water Run-Off';

Objective IUO15 'Surface Water Management Plan';

Objective IUO16 'OPW Flood Risk Management Guidelines';

Chapter 14 'Development Management Standards', incl. Section 14.2.3 'Sustainable Design and Climate Action';

Section 14.9 'Residential Development – General Requirements' and Section 14.9.6 'Taking in Charge and Management Companies'; *"All roads, footpaths, sewers, drains, lighting columns, mini-pillars, watermains, services and open spaces within the privately managed areas, irrespective of the management and maintenance regime to be put in place for these areas, shall be satisfactorily completed to the standard for development works as set out in Fingal County Council's Taking in Charge Policy and Specifications December 2020. In this regard, applicants shall have regard to the Department of the Environment, Community and Local Governments document Taking in Charge of Residential Developments Circular Letter PD 1/08, and Circular Letter PL 5/2014";*

Objective DMSO145 'Screening for Appropriate Assessment';

Section 14.20.3 'Sustainable Urban Drainage Systems (SuDS)'

Objective DMSO216 'Taking in Charge of new Surface Water Infrastructure':

"Require that all new surface water infrastructure within public or private developments be constructed in accordance with the standards set out within the Greater Dublin Regional Code of Practice for Drainage Works, as amended, irrespective of the management and maintenance regime proposed for the development or whether or not the development is intended to be taken in charge, in full or in part (i.e. infrastructure shall be to designed to taking in charge standards)";

Other

Section 9.6.14 'Landscape Character Assessment';

Policy GINHP26 'Preservation of Views and Prospects'

5.2.2. Appendix 11 'FCC SUDS Guidance Document – Green / Blue Infrastructure for Development:

Section 3.2.3.4 'Redevelopment of Brownfield sites'

Section 3.5.2 'Maintenance of SuDS systems': *"All SuDS features to be designed in accordance with current H&S legislation, bearing in mind the construction phase and the usage/maintenance phase. This may include consideration for the short/medium- and long-term usage of the areas in the context of Fingal's Development Plan and other policy documents such as Biodiversity Plan, Pollinator Plan etc. A Maintenance Plan shall be submitted for every proposal outlining the extent of work required and the frequency of maintenance required for all SuDS systems."*;

Section 3.5.4 'Liability for design'

Section 3.6 'SuDS FEATURES' incl. Section 3.6.4 'Bioretention Areas'

5.2.3. Strategic Flood Risk Assessment for the Fingal Development Plan 2023-2029.

5.2.4. The Development Plan refers to the following:

5.2.5. Fingal County Council Taking in Charge Policy & Specifications December 2020:

Section 1.5 'Infrastructure that can be Taken in Charge': *"SUDS features above ground such as permeable paving, ponds, swales and detention basins where these SUDS features are located in public areas and have been built in accordance with Fingal County Council's Green/Blue Infrastructure Taking in Charge Specification".*

Section 1.6 'Facilities that cannot be Taken in Charge': *"Boundary walls; Roads or services connecting into private infrastructure such as private roads, sewers etc. (i.e. roads that are not connected to an existing public road), and; Developments that have been conditioned to be private in their planning permission as they have no public utility".*

Section 2.2 'Taking in Charge – Planning Stage': *"No element of any services to be taken in charge (such as sewers, water-mains & public lighting) should be located under areas to be kept in private ownership".*

5.2.6. C753 The SuDS Manual, Ciria, 2015.

5.2.7. Other:

Fingal Climate Action Plan 2024-2029

‘A Householder’s Guide to Sustainable Drainage (SuDS), Managing rainfall more naturally in Fingal’.

5.3. **Natural Heritage Designations**

- 5.3.1. Malahide Estuary SAC and Malahide Estuary SPA are approximately 14m (0.014km) to the north.

6.0 **Environmental Impact Assessment (EIA) screening**

- 6.1.1. The proposed development has been subject to preliminary examination for environment impact assessment (See Form 1 & 2 Appendix 1 of this report). Having regard to the characteristics and location of the development and the types and characteristics of potential impacts, I consider that there is no real likelihood of significant effects on the environment. The development, therefore, does not trigger requirement for EIA screening and an EIAR is not required.

7.0 **The Appeal**

7.1. **Grounds of First-Party Appeal**

- 7.1.1. A first-party appeal was received from O’Neill Town Planning on behalf of the Mary & Dan Moynihan, the main points of which are summarised as follows:

- Background: Previous application (Ref. F24A/07180 was refused on grounds of drainage. For the subject application, the design team consulted Council drainage engineers. For operational reasons the provisionally agreed solution was rejected through Further Information. Further discussions were held with the Planning Authority drainage engineers, and a revised, provisionally agreed bioretention system solution to appropriate technical standards was submitted. Applicant is surprised after ‘lengthy and encouraging’ talks that application refused on grounds that the treatment of the pre-existing public surface water traversing the site would not be acceptable as it would result in the creation of

nature-based surface water measures on private land. Appellant is of opinion that both original and revised drainage solutions are viable and sustainable;

- Proposed development: Proposal is respectful of character and pattern of development in the area, and protects residential amenity. Proposed houses avoid overlooking. Height is respectful. The units comply fully with standards of Development Plan and Compact Settlement Guidelines;
- Drainage: Proposal seeks to connect to existing foul drainage on the site. Site is served by foul public service. All surface water would be dealt with on-site by infiltration (soakaways and attenuation) and complies with SuDS guidelines and Greater Dublin Regional Code of Practice for Drainage Works. There is no surface water discharge to the public system;
- Roads: 80m sightlines are achieved for the proposed widened entrance. Site is in a 50kmh zone. There are dedicated pedestrian footpaths both sides of the road. Road has constrained overtaking;
- Policy context: Appeal sets out details of policy and guidelines framework for the proposed development;
- Landscape & views: Site is in Coastal Character Type. In relation to views and prospects, appeal states that development should not be prohibited along these routes. Proposal will not impact the landscape characteristics or interfere / compromise any protected views / prospect;
- Grounds of appeal: Appellant refers to Planning Authority's general support for the development and its compliance with Development Plan. The Planning Authority concern is the surface water drainage solution proposed. The appeal responds to each element of the refusal reason, as follows;
- Point 1: Development Plan requirements for drainage are 'few and far between' and are aspirational rather than technical. Appellant's engineers scrutinised the Development Plan; Appendix 11; and 'Green / Blue Infrastructure for Development' document. Appellant contends that the surface water drainage system full complies with the Development Plan; Fingal Green / Blue Infrastructure for Development Guidance Note 2021; CIRIA SuDS Manual 2015; Greater Dublin Regional Code of Practice for Drainage Works 2012; and

Greater Dublin Strategic Drainage Study 2005. Green drainage solutions are underpinned by NPF and Fingal's Climate Action Plan 2019-2024, and are a cornerstone of achieving flooding and Water Framework Directive objectives;

- Point 2: The proximity of the surface water pipe to the house was raised by the Planning Authority Operations Department. Meetings were held on site. The Operations Department advised that 3m each side of the pipe was required for operational reasons. This is referenced in Irish Water wastewater separation distances, with its origins in Dublin Corporation drainage requirements; the appeal states that the separation distances mentioned refer to foul drainage only and not surface water. The 3m requirement was previously open to relaxations and offsets. Appellant therefore proposed an alternative approach to address surface water discharge comprising a bioretention system to replace the 225mm surface water pipe which discharged directly to the Estuary (SAC);
- Application proposed a bioretention system to treat and manage the surface water which originates outside the site. Proposal accords with CIRIA Manual. Proposal provides a self-irrigating landscape feature; habitat with biodiversity; and cooling of microclimate. Appeal sets out technical details. Proposed system will be located across both rear gardens. Proposal provides storage and infiltration to ground and prevents discharge into Malahide Estuary SAC except in circumstances greater than 1:10 years flood event, which appeal states there will no longer be surface water runoff into the Estuary from The Haven estate;
- Point 3: The existing surface water pipework traverses private land with no legal agreement. Applicant has agreed to provide access to the Council with a wayleave agreement for the proposed bioretention system. A condition for same can be attached. The proposed solution will be on private land with a wayleave for the Council. Applicant will also include the demolition and rebuilding of walls as part of the wayleave agreement to ensure access will be achieved. Appeal notes the Council seek a 6m wayleave for any solution to allow for maintenance and access. Appeal states access to the rear can be through the side passage to each house; or from The Haven estate which is taken in charge; or from the adjoining neighbouring house access road. The proposed solution provides an overflow pipe 600-900mm below ground which is

accessible with a mini-digger which requires no more than 1.3m in width. There are no structural implications on the garden wall or proposed house walls;

- Proposal removes a 40-year-old 225mm diameter pipe which crosses private land to discharge untreated urban runoff into the SAC, with a new 100mm overflow pipe which only discharges filtered water during high intensity events. Maintenance of the proposed pipe is far easier than the existing;
- Conclusion: Appellant sees no reason why locating the proposed measure on private land is problematic as wayleaves and access can be provided. Proposal is structurally sound; of sound engineering principles; and improves the current situation environmentally where untreated surface water drains to the Estuary.

7.1.2. The appeal includes a letter from Allwood Carpentry & Construction Ltd; engineering plans; and related schedules. The appeal also includes an 'Appeal Submission Engineering Report' (28th October 2025) from The McKenna Pearce structural & civil engineering practice. The report sets out significant surface water drainage technical detail, with the majority of points made being reiterated in the above appeal document by O'Neill Town Planning. I note the following additional points made:

- Planning history: Report sets out details of planning history; technical meetings with the Council on-site;
- Application: Both drainage solutions proposed are acceptable. Site is brownfield and existing conditions are limiting. The proposed solution seeks to mitigate whilst improving infrastructure. Permission for the existing arrangements which drains The Haven development through the subject site without treatment would not be permitted today;
- Summary: The proposed nature-based solution, whilst on private land, is structurally sound; complies with engineering principles; and is far more environmentally friendly than current situation. Any misgivings from the Council Drainage Department and Operational Department are unfounded or can be overcome. The solution has been designed in compliance with guidance; report cannot find any reason in those documents why the proposal is unacceptable;
- Bio-retention system and private land: Currently, surface hardstanding (roofs & roads) from The Haven estate run through the site which is private land. This

runoff contains motor vehicle contaminants, dust, animal faeces, soil, litter etc. The proposal will reduce the level of runoff, improve water quality, and contribute to climate change as per Development Plan guidance. It will also provide surface water storage and infiltration to ground. It will also prevent overflow discharge to the Estuary except in circumstances greater than 1:10 year. In such infrequent high intensity events the overflow will be less than half the volume currently discharged and will always have passed through the filter media. Any rainfall up to 1:10 year will infiltrate to ground after passing the filter media. Proposal takes account of flooding, water quality, biodiversity, and amenity that replaces direct discharge into the Estuary. Proposal is sized for 1 in 10-year rainfall and 25% climate change addition;

- Private land: Report states that it does not believe that nature-based surface water measures cannot be provided on private land. The Council provides a *“Householder Guide to Sustainable Drainage (SuDS)”* and *“Green / Blue Infrastructure for Development”* document which promote SuDS. Any Council concerns regarding access can be overcome by wayleave agreements. The applicant will undertake to enter into a maintenance agreement to inspect the pumps annually. The existing pipework traverses private land with no legal agreement. Applicant will include rebuilding walls as part of wayleave agreement to ensure access. The Council are seeking a 6m wayleave even though 6m is not required. Access to the proposed bioretention system can be made from the side passages to each house; or from The Haven estate which is taken in charge; or from the adjoining neighbouring house access road/driveway (a corresponding layout plan is indicated). The side passage is 2.2m wide at narrowest. There are no structural implications for the house or side wall. Report states authors see no reason why the proposed surface water measure on private land is problematic;
- Pump sump: Proposal includes a duty pump and standby pump to raise the surface water flow from the existing low level pipe to the level of the filter media. As above the applicant will enter into an annual maintenance agreement. In the unlikely event both pumps fail during a high intensity event (that is, 1:100 year) the sump can overflow into the filter media. Report states that if the amount of water is greater than the capacity of the filter media in this

rare instance this map potentially cause temporary back up of the road gullies and ponding on the road surface. As this will also cause ponding in the rear garden of the site, it is in the homeowner's interest to ensure the pumps are maintained. The pump and pipe can be accessed from the site and The Haven estate as the main road directly abuts the applicant site;

- Overflow: Report sets out construction and technical details for the proposed arrangement, including in relation to construction and access. Report states that construction and maintenance will be perfectly accessible and not problematic to locate the proposed pipe within the 2.2m side access;
- Response to further information: Report sets out technical and construction details of the proposed arrangement, and details of on-site meetings with the Council Operations Department;
- Original application: Report notes that the originally submitted solution of relocating the 225mm pipe within a 6m wayleave remains viable and feasible. Report sets out technical and construction details. Report states that the wayleave would comprise 2.2m within the applicant site and 3.8m within the adjoining driveway (separated by a boundary wall). Report states that the pipe installation design is structurally sound and allows for future excavation without affecting the boundary wall or house;
- Development Plan: Report sets out relevant Development Plan provisions;
- Summary: Report is of the view that the refusal is based on a fear of (a) having the surface water solution on private land; (b) the necessity to use a pumped solution; and (c) the proximity of a 100mm diameter pipe to any adjoining structures/wall. Report states that (a) access can be legally and practically maintained by the bioretention system on private land and guarantee maintenance of the system and pumps; (b) the use of a duty and standby pump with maintenance contracts addresses any issues along with a failsafe overflow to prevent any excessive flooding ensures any reservations are mitigated, and; (c) Use of a 100mm pipe for a high level overflow from the system is the equivalent of a private roof drain adjacent to a house and will be fully accessible with mini excavation equipment.

7.2. Planning Authority Response

7.2.1. The Planning Authority response makes the following points:

- The response generally reiterates the reason for refusal;
- The development is not considered acceptable;
- Requests the Commission uphold the decision to refuse in accordance with the conditions as set out in the notification to refuse;
- In the event permission is granted, conditions for financial contributions (Section 48; a bond/cash security for residential development of 2 or more units; and a tree bond or contribution in respect of a shortfall of play provision.

7.3. Observations

7.3.1. One Observation was received by the Commission, from Jason O'Toole of No. 16 The Moorings, Malahide, summarised as follows:

- Observer supports the first-party appeal in relation to the suggested surface water solution for the project;
- Observer is concerned the Council continue to allow the 16 no. houses from the Haven Estate to discharge untreated storm and surface water pollutants into the Malahide Estuary by the subject site Muire Na dTonn;
- The suggested drainage solution will help eliminate discharge of storm water and pollutants from 16 no. houses into the Malahide Estuary by a method of bio-retention which is already endorsed by the Council;
- The Council have released at least 3 no. public documents (including 'Green / Blue Infrastructure for Development') which endorses the use of greener, biodiverse and environmentally friendly drainage solutions like the solution applied for in the subject application;
- Malahide Estuary is an SAC. Council should be forced to find alternative, modern solutions to old legacy drains that release pollutants into the local waterways;

- The suggested solution goes a long way to solving the pollution problem. It should be granted, or the Council forced to deal with pollutants on site from within The Haven Estate.

7.4. Further Responses

7.4.1. None.

8.0 Assessment

8.1.1. Having regard to the foregoing; having examined the application, appeal, Planning Authority reports, and all other documentation on file including all of the submissions received in relation to the appeal; and having inspected the area within and around the site; and having regard to relevant local, regional and national policies, objectives and guidance, I consider the main issues in this appeal are as follows:

- Refusal reason;
- Related matters raised in the course of the appeal.

8.2. Refusal reason 1

- 8.2.1. Regarding the principle of development, the site is zoned 'RS – Residential'. Residential development is permitted in principle. I am satisfied the proposed development is acceptable in principle subject to the considerations below.
- 8.2.2. Regarding the refusal reason, I have reviewed the application, appeal, and Planning Authority internal reports, as well as the Observation. I have also considered the provisions of the Development Plan, and relevant local, regional and national guidance as set out in Section 5.0 of this report.

Existing site

- 8.2.3. The appellant and Planning Authority internal reports indicate that a surface water sewer from The Haven runs through the rear garden and drive of the existing dwelling on site. The appellant indicates the existing dwelling also drains to this sewer. The sewer then runs under the road to Malahide Estuary. The applicant proposes to divert the sewer within the site and connect the proposed dwellings to

an altered surface water arrangement which would serve both the proposed development and The Haven.

- 8.2.4. The appellant states that The Haven is taken in charge. The Water Services Department Report and Planning Authority decision state the sewer through the site is a public sewer. No submission from Irish Water is on file.

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- 8.2.5. I note the relevant provisions of the Development Plan, in particular Objectives DMSO216 and IUO8, as well as Sections 14.9 and 14.9.6. I also note the provisions of the Greater Dublin Regional Code of Practice for Drainage Works, in particular Sections 3.8; 6.1; and 7.1. I further note Fingal's Taking in Charge Policy & Specifications December 2020 Section 2.2.
- 8.2.6. Objectives DMSO216 and IUO8 require all new surface water infrastructure in public or private developments to be constructed in accordance with the standards in the Greater Dublin Regional Code of Practice, irrespective of the management and maintenance regime proposed or whether the development is intended to be taken in charge, in full or in part (meaning that they are required to be designed to taking in charge standards).
- 8.2.7. Section 3.8.2 of the Greater Dublin Regional Code of Practice states that a minimum clear distance of 3m between the outside diameter of the pipe and all structures shall be maintained to allow for future access and maintenance of the pipeline. Section 6.1 states that the Local Sanitary Authority requires a minimum clear distance of 3m be maintained between sewers and all structures on site, including basement and foundations. I note in particular Section 7.1 states that any diversion shall not adversely affect the maintenance of the sewer.
- 8.2.8. Development Plan Sections 14.9 and 14.9.6 set out similar requirements and require that all roads sewers, drains, services and open spaces in privately managed areas, irrespective of the management and maintenance regime to be put in place shall be satisfactorily completed to the standard for development works as set out in Fingal's Taking in Charge Policy and Specifications December 2020.
- 8.2.9. In summary, having regard to the foregoing, I am satisfied the development as proposed does not meet the stated requirements of Development Plan Objectives DMSO216 and IUO8. In this regard the proposed public sewer diversion would be

within 3m of existing boundary walls and one of the proposed dwellings, which is contrary to Sections 3.8.2 and 6.1 of the Greater Dublin Regional Code of Practice.

8.2.10. I note that Section 2.2 of the County Taking in Charge Policy states that no element of any services to be taken in charge such as sewers should be located under areas to be kept in private ownership. Section 1.6 refers to facilities that cannot be Taken in Charge and includes services connecting into private infrastructure such as sewers. I note also the points made by the appellant generally that the public sewer to be diverted already runs through the site, and that the application is seeking to address the pre-existing situation as part of the redevelopment. The appellant sets out significant technical, operational and construction details in this regard, and states that the surface water arrangement proposed is acceptable. Given this context, in the interests of completeness, below I consider further whether the proposal is acceptable having regard to these considerations.

Proposed surface water arrangements

8.2.11. The appellant states that both surface water arrangements proposed at application stage and in response to further information are acceptable. Both layouts provide for diversion within the site of the existing surface water line from The Haven, and for SuDS measures to cater for runoff from the proposed dwellings. The response to further information layout also incorporates surface water treatment for surface runoff from The Haven to be located in the rear gardens of the proposed houses.

8.2.12. The Planning Authority internal reports raised concern with both arrangements.

8.2.13. In both layouts I note the following:

- The layouts would change the existing layout of the sewer running through the rear and side of one dwelling to that of two dwellings;
- The layouts would increase the proximity of the diverted sewer to the proposed dwellings and existing boundaries, particularly dwelling no. 1;
- Regarding boundaries: To the east, the boundary wall along the access to Keadeen / Creevelagh is to be retained. Ownership / control of that wall is not clearly stated. To the west, the boundary wall with The Haven is also to be retained. An additional boundary over the sewer between the proposed dwellings is proposed, the nature of which is not clearly stated;

- Further regarding maintenance access, the applicant indicates the following:
 - Access would be dependent on accessing the private amenity space of the two proposed houses, and potentially removal of boundary walls;
 - The diverted sewer would be at a shallower depth and be more accessible;
 - From the west, access would be available from the parking and vehicular circulation in The Haven (west of proposed dwelling no. 2);
 - From the east, the appellant states access would be available from the neighbouring access to 'Keadeen'. A letter is submitted from Des Farrell and Catherine Farrell of Keadeen. The letter states the neighbours' intention to provide the Council & Irish Water with a deed of grant for easements and wayleave in support of the application, subject to all realignment works and commission of same is carried out within the application site. I consider that the purpose of this letter is to indicate that a 6m wayleave could be made available comprising of the proposed side passage plus the adjacent third-party access. However, the access to 'Keadeen' is a shared access with 'Creevelagh'. No correspondence in relation to that dwelling is on file. The access to those dwellings is gated.
- Regarding the proposed SuDS features to serve The Haven, the system would extend over both proposed private rear gardens, and would connect with the public sewer. It would appear that retention and maintenance of the system would be partly dependent on future occupants of the proposed dwellings.

8.2.14. In summary, given the foregoing, I consider the appellant has not clearly demonstrated the proposed surface water arrangement, including both the diverted sewer and proposed private SuDS measures, would not adversely affect maintenance of the public sewer in line with Development Plan Objectives DMSO216 and IUO8, and corresponding Section 7.1 of the Code of Practice.

8.2.15. In this regard, I also note a lack of clarity within the appeal; in this regard the appellant appears to state that the proposed arrangement prevents discharge / runoff into the Estuary from The Haven, and that all surface water would be dealt with on-site, with no surface water discharge to the public system. My review of both layouts indicates that this is not fully accurate, in that there would be exceedance

flows from the Haven during rainfall events greater than 1 in 10-year, and that runoff from the roofs of the proposed dwellings would arise, albeit both receiving a level of treatment from the proposed SuDS.

8.2.16. For completeness I consider each arrangement in further detail below.

Application stage layout

8.2.17. Regarding the arrangement as proposed at application stage, the Water Services Department set out reasons why the arrangement was not acceptable, as above.

8.2.18. The application included for silt traps for runoff from the proposed roofs prior to discharge to the public sewer; driveways and car parking were to be of permeable paving; garden planters to the front; and soft landscaping to the rear. I consider that the approach to surface water for the proposed dwellings was broadly acceptable, subject to conditions for the agreement of detailed surface water design and integration of rainwater planters as per the Water Services report.

8.2.19. This however is with the exception of matters relating to the proximity of the diverted sewer, house and boundary wall, including having regard to the lack of detail relating to the availability of appropriate wayleaves; the ability to alter existing / proposed boundaries to the east and west; or ability to provide access to the proposed public sewer within the site of both proposed dwellings. Accordingly, I am not satisfied that maintenance of the public sewer would not be adversely affected.

Further information layout

8.2.20. Regarding the arrangement as set out in response to further information, the Water Services Department stated the revised surface water drainage proposal, with specific regards to the treatment of the pre-existing public surface water sewer traversing the site, was not acceptable. I have set out details above.

8.2.21. My understanding of that report and the refusal reason is that the Planning Authority concern arose in relation to the proposed bioretention system within two private gardens to treat the public surface water sewer traversing the site from The Haven. In this context, the report also raised concern with the need for pumping that runoff to resolve the proposed drainage levels, and also the ensuing overflow outlet which is in close proximity to the boundary wall and proposed dwelling (the diverted sewer).

- 8.2.22. The arrangement proposed at further information stage again comprised filter drains, permeable paving, and soft landscaping for runoff the proposed dwellings, but introduced a bioretention system to provide treatment for the roofs and roads within The Haven. The submitted information indicated the bioretention system was sized to accommodate runoff from all roofs and roads within The Haven. The system would extend within the two proposed rear gardens. A pump would be required due to level differences within the proposed system. A back-up pump would be incorporated. Overflow from the bioretention system and treated runoff from the proposed dwellings would run to the diverted sewer within the site, and then on to the existing sewer within the public road and eventual outfall to the Estuary. The appellant notes that any overflow from the bioretention system would run through the filter medium.
- 8.2.23. Regarding surface water for the proposed dwellings, whilst I am satisfied the arrangement as submitted in response to further information is broadly acceptable subject to conditions, this remains with the exception of matters related to the proximity of the diverted sewer, house and boundary wall. In this regard I again note the lack of detail regarding the availability of an appropriate wayleave; the lack of details regarding the ability to alter the proposed boundaries to the east and west; and lack of detail regarding access to the public sewer in both proposed dwellings.
- 8.2.24. Regarding the proposed arrangement as it relates to the treatment of surface water within the public sewer (that is, from The Haven estate), I am not satisfied the proposal is acceptable, including on grounds that the proposal introduces SUDS features to a public sewer for a taken-in-charge development that is located on private land which, as proposed, has the potential to adversely impact maintenance and access by the Council. I accept that the existing 225mm public sewer runs through the site, and I acknowledge the reasonably low maintenance approach of the bioretention system and level of reliability of the proposed dual-pump system. Conversely however I also note that existing low maintenance arrangement, and that the proposal would change from the arrangement being with a private dwelling, to an arrangement over two dwellings which would be in closer proximity, as well as potentially relying on third party lands for access and the introduction of additional boundaries over the sewer. In comparing the existing and proposed, on balance I consider the appellant has not clearly demonstrated that the proposed arrangement

would not adversely affect maintenance of the public sewer, as per Development Plan Objectives DMSO216 and IUO8 and Code of Practice Section 7.1.

- 8.2.25. Further regarding maintenance, I note the information set out by the appellant. Development Plan Appendix 11 Section 3.5.2 'Maintenance of SuDS systems' states that a maintenance plan shall be submitted for every proposal outlining the extent of work required and the frequency of maintenance required for all SuDS systems. No maintenance plan is provided with the application or appeal.

Flood risk

- 8.2.26. I have reviewed the Planning Submission Engineering Report submitted with the application. The report briefly addressed tidal, fluvial, and pluvial flood risk sources; set out minimal details in relation to flood risk; and did not clearly address other forms of flood risk, for example failure or exceedance of infrastructure during more extreme weather events. I have also reviewed the Appeal Submission Engineering Report; it does not specifically address flood risk, but it does address overflow and potential failure of the proposed arrangement.
- 8.2.27. The Planning Authority Water Services Section stated no objection in relation to flood risk at either application or further information stages.
- 8.2.28. Development Plan mapping indicates that Flood Zones A & B extend into the front of the site. The existing site rises relatively steeply from the road, by over 1m, with the exception of the existing driveway. The proposed dwellings are set back behind the line of the existing dwelling, and I am satisfied they are set back out of the flood zones. Whilst in close proximity to Malahide Estuary, modest changes to ground levels are proposed and as such the majority of the site as proposed would remain elevated significantly above the road. The proposed parking areas would be primarily within the Flood Zone B and are designed with permeable paving on a slope.
- 8.2.29. Whilst I consider that the risk of flooding for the proposed development from tidal, fluvial or pluvial sources is generally acceptable, I am not satisfied the flood risk assessment demonstrated due consideration of potential combined effects during a flood event, to include failure/exceedance of the proposed surface water arrangements. In particular I am not satisfied the information submitted clearly demonstrates the extent of potential impacts on the subject development, The Haven estate, or public road from failure/exceedance of the proposed system at such times.

- 8.2.30. In this regard, the Appeal Submission Engineering Report states that *“In the unlikely event of both pumps failing during a high intensity event i.e 1:100 year event and not a day to day, the sump can overflow at high level into the filter media. If the amount of water is greater than the capacity of the filter media in this rare instance this may potentially cause temporary back up of the road gullies and ponding on the road surface. As this will also cause ponding of the garden surface in the rear gardens it is in the homeowners’ interest to ensure the pumps are in working order.”* I note the characterisation of impacts provided. I see minimal consideration of the scale of impact on The Haven should the proposed system fail / be exceeded.
- 8.2.31. I note that the appellant indicates that the proposed treatment train would accommodate flows up to the 1 in 10-year event but not beyond that, whereon waters would overflow to the existing surface water line which flows to the Estuary.
- 8.2.32. Development Plan Objective IUO16 seeks to have regard to the Flood Risk Management Guidelines. Section 2.2 and 2.3 of the Guidelines highlight flood risk from artificial drainage and infrastructure failure. Section 2.20 states risks should be assessed over the full range of probabilities, including extreme events. The flood risk assessment should cover all sources of flooding, including the effects of run-off from a development on flood risk both locally and beyond the development site.
- 8.2.33. In summary, given the proximity of the site to the Malahide Estuary; the front of the site being in Flood Zones A/B; the proximity of the site to the road; and the proposed drainage relationship between the proposed development and The Haven, I am not satisfied the information submitted including flood risk assessment have demonstrated due consideration of the potential impact of combined sources of flood risk, including infrastructure failure/exceedance during extreme events, in line with Development Plan Objective IUO16.

Malahide Estuary

- 8.2.34. Refer to Section 9.0 and Appendix 2 of this report.
- 8.2.35. Refusal reason 3 of the previous refusal on the site stated generally that having regard to the proximity to Malahide Estuary SAC and SPA, the Screening Statement was insufficient and contravened Objective DMSO145 of the Development Plan. No SuDS features were incorporated into that scheme, and the site was hydrologically

connected to Malahide Estuary. I note that the Screening Statement submitted with the previous application was brief and prepared by the applicant's architect.

- 8.2.36. The Planner Report in the subject case stated that, whilst noting the further information provided, a conclusion relating to the impact of the surface water outfall on protected sites could only be made once the proposed diversion of the sewer is deemed to be acceptable.
- 8.2.37. The existing surface water system for the house connects to the surface water pipe within the site, which also serves The Haven estate to the south/west. That connection ultimately discharges to Malahide Estuary across the road. The proposed development does not alter the discharge point at the road but diverts and alters the surface water regime within the site.
- 8.2.38. I have reviewed the AA screening report submitted with this application and updated report submitted in response to further information. Both reports identify the Malahide Estuary SAC and SPA within the zone of influence for the development. The reports state that in relation to the construction phase, no mitigation is required to ensure there are no impacts on the European Sites as the surface water drain running beneath the existing building will be diverted prior to construction. For the operational phase, the reports state that all foul and surface water runoff will be contained on site and discharged to sustainable urban drainage systems prior to the existing sea outfall. In this regard the reports state there is no real likelihood of any significant effects on European Sites. The updated report takes account of the revised surface water treatment regime. The reports conclude that there are no predicted effects on any European Sites, and that it can be excluded, on the basis of objective information, that the proposed development, individually or in combination with other plans or projects, will have a significant effect on any European site, in the absence of any mitigation. For clarity, no mitigation is set out in the report.
- 8.2.39. Regarding surface water runoff from the Haven, runoff through the sewer on the subject site appears to be largely untreated. The proposed arrangement indicates that it would provide treatment with the bioretention system up to 1 in 10 year event levels, and beyond that would run through the overflow to the public sewer on to the Estuary. The submitted screening report does not directly address this matter. Overall I would characterise the proposed arrangement as providing a level of

treatment for The Haven estate which appears to be currently untreated, but that due to the nature and sizing of the system proposed, partially treated overflow would run to the Estuary from The Haven but through the proposed development during events of more than the 1 in 10 year. In this regard the appellant clarifies that all runoff would at run least through the proposed bioretention filter media.

8.2.40. A level of surface water runoff treatment for the proposed dwellings is also proposed.

8.2.41. In summary, having reviewed the submitted information, in the subject case I am satisfied that the previous reasons for refusal in this regard have generally been overcome, and that the submitted information is sufficient and complies generally with Development Plan Objective DMSO145.

Conclusion

8.2.42. As set out above, given the current regulatory context, I am not satisfied the proposal provides for an acceptable surface water drainage regime for the site and surrounding area in accordance with Development Plan requirements.

8.2.43. I acknowledge, as set out by the appellant, the existing public sewer through the site; the lack of surface water treatment for The Haven or existing dwelling on-site; issues with access/maintenance of the existing public sewer; and the absence of agreements in that regard. I also acknowledge the proposal has sought to resolve the pre-existing regime with an improved approach, and I note the potential benefits the system would introduce to a brownfield area, including in relation surface water treatment, biodiversity, climate, and amenity. However, I also consider the proposed layout introduces potential maintenance issues arising from the proposed layout across two private dwellings, including the proposed SuDS system to a public sewer. On balance I do not consider the appellant has clearly demonstrated the proposed arrangement would not adversely impact the maintenance of the sewer or local flood risk as required by the Development Plan.

8.2.44. Having reviewed the available information, I consider that alternative site and dwelling layouts may be achievable which could provide for redevelopment of the site whilst also providing for improved drainage arrangements. I am not satisfied the development as proposed at either application or further information stage demonstrate due regard to Development Plan Objectives DMSO216 and IUO8 in relation to Sections 3.8.3, 6.1, and 7.1 of the Greater Dublin Regional Code of

Practice for Drainage Works, or Objective IUO16 in relation to flood risk. I consider the development as proposed would therefore be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

Previous reason for refusal

- 8.2.45. Refusal reason 1 of the previous application on site was on grounds of the applicant's failure to provide adequate separation distances between the houses and the existing surface water sewer on the site, and that this would contravene Objective IUO5 of the Development Plan 2023-2029. The drainage layout in that case was broadly comparable to the drainage layout as submitted with the application in the subject case. Accordingly, I do not consider this previous reason for refusal has been satisfactorily addressed.

8.3. Related matters raised in the course of the appeal

Design, layout and development standards

- 8.3.1. I have reviewed the proposed design, layout and materials. I have had regard to the requirements of the Development Plan and relevant guidelines, as well as the Planning Authority internal reports. No observations from neighbouring residents were received at application or appeal stage.
- 8.3.2. The site is in an urban / suburban area, with dwellings to the south, east and west. Malahide Estuary is a short distance across the road to the north. The Development Plan indicates that the site is within the 'Estuary' landscape character type which is of exceptional landscape value and high landscape sensitivity. The site is also indicated within the Development Plan to be in a 'Highly Sensitive Landscape'. The appellant states the proposal will not impact the landscape characteristics. The Development Plan also indicates a 'Preserve Views' objective along Bissetts Strand road as per Policy GINHP26. The appellant states the proposal will not interfere or compromise any protected views or prospect.
- 8.3.3. The dwellings in the area are a mix of single-storey, dormer, and 2-storey. The dwellings to the west and south of the site are predominantly 2-storey. I consider that the proposed designs are comparable to those of The Haven. Proposed finishes are set out. I am broadly satisfied that the proposed dwellings comply with the requirements and standards of the Development Plan and relevant guidance,

including in terms of open space, internal accommodation, and layout, as well as in terms of impact on the landscape character and protected views and prospects.

- 8.3.4. In the previous refusal on the site, refusal reason 2 was on grounds that the design and excessive scale would be overbearing and visually intrusive within a sensitive landscape and out of character with the streetscape which would seriously injure the amenities of the area and contravene Development Plan Objective DMSO31. The proposed height has been lowered by approx. 0.5m for both dwellings and the front elevations have been revised to follow a more traditional format. Whilst I acknowledge the prominence of the site, and the sensitivity of the area in terms of landscape, there is an existing dwelling on the site, and the adjacent lands to the south, east and west are comprised of comparable dwellings. Accordingly, I am broadly satisfied the revised design and scale is broadly acceptable, and satisfactorily resolves the previous reason for refusal in this regard.

Access

- 8.3.5. I note the appellant states there are dedicated pedestrian footpaths both sides of the road. This is not the case, however there is a public footpath adjacent the site. The applicant proposes vehicular access to each dwelling from the road with parking to the front. Parking for two cars is proposed for each dwelling. The Planning Authority Transportation Section raised no objection subject to standard conditions. The site is in a 50kmh zone. I am satisfied that reasonable visibility would be available for pedestrians, cyclist and vehicles. I am satisfied with the proposal in this regard.

Demolition of existing dwelling

- 8.3.6. I note the provisions of the Development Plan in this regard. I have reviewed the submitted Demolition Justification Report. The Planner Report generally accepted the proposed demolition and set out their rationale in this regard. I am satisfied that demolition of the existing dwelling and its replacement with two dwellings is in principle acceptable.

Previous reasons for refusal

- 8.3.7. The previous application on the site was refused for 3 no. reasons which I have addressed above.

Conditions

8.3.8. Should the Commission be minded to grant permission, in addition to the foregoing, I also consider the following regarding conditions:

- Foul & potable water: Proposal will connect to mains foul and water supply. Standard conditions relating to Uisce Eireann;
- Access: I note the Transportation Department recommendations in this regard. Standard conditions for the agreement of access design details and reinstatement of the public road;
- Landscape: I note the Parks Section recommendations in this regard. I see no grounds for a tree bond. Standard condition for the agreement of landscaping and boundaries;
- Construction management: Standard construction management plan to include for construction traffic management, waste, and residential amenity;
- Contributions: Section 48

9.0 Appropriate Assessment screening

9.1.1. Refer to Section 8, Appendix 2, and Section 8.2 ('Malahide Estuary') of this report.

9.1.2. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that the proposed development individually or in combination with other plans or projects would not be likely to give rise to significant effects on any European Sites including the Malahide Estuary SAC and Malahide Estuary SPA in view of the conservation objectives of these sites and is therefore excluded from further consideration. Appropriate Assessment is not required. This determination is based on the nature of the proposed works and the location and distance from nearest European site and lack of connections.

10.0 Water Framework Directive

10.1.1. The subject site is located in a suburban area approx. 14m from Malahide Estuary. The proposed development comprises demolition of existing two house and garage and the construction of two houses with separate vehicular access. No water

deterioration concerns were raised in the planning appeal. I have assessed the project and have considered the objectives as set out in Article 4 of the Water Framework Directive which seek to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively, or otherwise jeopardise any water body in reaching its WFD objectives. The reason for this conclusion is as follows: The nature of works e.g. small scale and nature of the development including drainage proposed. I conclude that on the basis of objective information, the proposed development will not result in a risk of deterioration on any water body (rivers, lakes, groundwaters, transitional and coastal) either qualitatively or quantitatively or on a temporary or permanent basis or otherwise jeopardise any water body in reaching its WFD objectives and consequently can be excluded from further assessment.

11.0 Recommendation

11.1.1. I recommend permission be **Refused**, for the reasons and consideration below.

12.0 Reasons and Considerations

It is considered that the application has not satisfactorily demonstrated that the development as proposed would provide for the appropriate management of surface water and flood risk, as required by Objectives DMSO216 and IUO8, in relation to the Greater Dublin Regional Code of Practice for Drainage Works, and Objective IUO16, in relation to flood risk, of the Fingal County Development Plan 2023-2029, including in terms of the maintenance of the public sewer on-site. It is considered therefore that the development as proposed would be prejudicial to public health and contrary to 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 me, directly or indirectly, following my professional assessment and recommendation set out in my report in an improper or inappropriate way.-

Dan Aspell
Planning Inspector
19th June 2026

APPENDIX 1

Form 1: EIA Pre-Screening

Case Reference	ACP-500170-DF-25
Proposed Development Summary	Demolition of existing 2-storey 4 bedroom house and garage and the construction of two 2-storey houses with separate vehicular access
Development Address	Muire na dTonn, Bissetts Strand, Malahide
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA?	
	☒ Yes, it is a 'Project'. Proceed to Q2.
	☐ No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
☐ Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
☒ No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
☐ No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road development under Article 8 of the Roads Regulations, 1994. No Screening required.	
☐ Yes, the proposed development is of a Class and meets/exceeds the threshold. EIA is Mandatory. No Screening Required.	
☒ Yes, the proposed development is of a Class but is sub-threshold. Preliminary examination required. (Form 2) OR If Schedule 7A information submitted proceed to Q4. (Form 3 Required)	Class 10(b)(i) Construction of more than 500 dwelling units.
4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?	
Yes ☐	Screening Determination required (Complete Form 3)
No ☒	Pre-screening determination conclusion remains as above (Q1 to Q3)

Inspector: _____ Date: __ 8th June 2026 __

Form 2: EIA Preliminary Examination

Case Reference	ACP-500170-DF-25
Proposed Development Summary	Demolition of existing 2-storey 4 bedroom house and garage and the construction of two 2-storey houses with separate vehicular access
Development Address	Muire na dTonn, Bissetts Strand, Malahide
This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.	
Characteristics of proposed development	Proposed development comprises demolition of a house and construction of two houses in a town. The proposed development has a modest footprint, comes forward as a standalone project, requires minimal demolition works, does not require the use of substantial natural resources, or give rise to production of significant waste, significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, human health or is vulnerable to climate change.
Location of development	The development is located in a town on brownfield land. The receiving location is not particularly environmentally sensitive and is removed from sensitive natural habitats, designated sites and identified landscapes of significance in the County Development Plan. The site is of not historic or cultural significance. Given the scale and nature of development and mitigation proposed there will be no significant environmental effects arising.
Types and characteristics of potential impacts	Having regard to the characteristics and modest nature of the proposed development, the sensitivity of its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.
Conclusion	
Likelihood of Significant Effects	Conclusion in respect of EIA
There is no real likelihood of significant effects on the environment.	EIA is not required.
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.
There is a real likelihood of significant effects on the environment.	EIA is not required.

Inspector: _____ Date: 8th June 2026 _____
 DP/ADP: _____ Date: _____

APPENDIX 2

Screening for Appropriate Assessment - Test for likely significant effects				
Step 1: Description of the project and local site characteristics				
Brief description of project		Demolition of existing 2-storey 4 bedroom house and garage and the construction of two 2-storey houses with separate vehicular access.		
Brief description of development site characteristics and potential impact mechanisms		Site measures 0.071ha and generally comprises a dwelling. Site is approx. 0.014km south of Malahide Estuary SAC and Malahide Estuary SPA.		
Screening report		Yes		
Natura Impact Statement		No		
Relevant submissions		Planning Authority screening		
Step 2. Identification of relevant European sites using the Source-pathway-receptor model				
European Site (code)	Qualifying interests Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connection	Consider further in screening Y/N
The submitted 'Report for the purposes of Appropriate Assessment Screening' from Moore Group (dated 28 th August 2025) identifies two European Sites within a zone of influence. It concludes that that there are no predicted effects on any European Sites, and that it can be excluded, on the basis of objective information, that the proposed development, individually or in combination with other plans or projects, will have a significant effect on any European site, in the absence of any mitigation.				
Malahide Estuary SAC (000205)	https://www.npws.ie/protected-sites/spa/004158	0.014km	Indirect hydrological	N
Malahide Estuary SPA (004025)	https://www.npws.ie/protected-sites/spa/004236	0.014km	Indirect hydrological	N
Step 3. Describe the likely effects of the project (if any, alone <u>or</u> in combination) on European Sites				
AA Screening matrix				
Site name Qualifying interests		Possibility of significant effects (alone) in view of the conservation objectives of the site*		
		Impacts	Effects	
Malahide Estuary SAC (000205) 1140 Mudflats and sandflats not covered by seawater at low tide 1310 <i>Salicornia</i> and other annuals colonising mud and sand 1320 <i>Spartina</i> swards (<i>Spartinion maritimae</i>) 1330 Atlantic salt meadows (<i>Glaucopuccinellietalia maritimae</i>) 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 2120 Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) 2130 Fixed coastal dunes with herbaceous vegetation (grey dunes)* The Conservation Objectives for the SPA are to maintain and restore the favourable conservation conditions of the identified Qualifying Interests. I consider the project		No direct, indirect, ex situ or in combination impacts.	No significant effects likely. (Note: The proposed development is to connect to mains foul sewer. Surface water is to drain to ground and public surface water sewer. SuDS measures are incorporated across the site. SuDS measures are also proposed to provide a level of treatment for the neighbouring <i>The Haven</i> development. This comprises surface water	

would not compromise the objective of restoration or make restoration more difficult.		treatment and partial treatment at times of increased runoff (that is over 1 in 10 year events.).
No	Likelihood of significant effects from proposed development (alone): No	
No	If No, is there likelihood of significant effects occurring in combination with other plans or projects? No	
No	Possibility of significant effects (alone) in view of the conservation objectives of the site No	
	Impacts	Effects
Malahide Estuary SPA (004025) A005 Great Crested Grebe <i>Podiceps cristatus</i> A046 Brent Goose <i>Branta bernicla hrota</i> A048 Shelduck <i>Tadorna tadorna</i> A054 Pintail <i>Anas acuta</i> A067 Goldeneye <i>Bucephala clangula</i> A069 Red-breasted Merganser <i>Mergus serrator</i> A130 Oystercatcher <i>Haematopus ostralegus</i> A140 Golden Plover <i>Pluvialis apricaria</i> A141 Grey Plover <i>Pluvialis squatarola</i> A143 Knot <i>Calidris canutus</i> A149 Dunlin <i>Calidris alpina alpina</i> A156 Black-tailed Godwit <i>Limosa limosa</i> A157 Bar-tailed Godwit <i>Limosa lapponica</i> A162 Redshank <i>Tringa totanus</i> A999 Wetlands The Conservation Objectives for the SPA are to maintain the favourable conservation conditions of the identified Qualifying Interests.	No direct, indirect, ex situ or in combination impacts.	No significant effects likely. (Note: The proposed development is to connect to mains foul sewer. Surface water is to drain to ground and public surface water sewer. SuDS measures are incorporated across the site. SuDS measures are also proposed to provide a level of treatment for the neighbouring <i>The Haven</i> development. This comprises surface water treatment and partial treatment at times of increased runoff (that is over 1 in 10 year events.).
No	Likelihood of significant effects from proposed development (alone): No	
No	If No, is there likelihood of significant effects occurring in combination with other plans or projects? No	
Step 4 Conclude if the proposed development could result in likely significant effects on a European site		
I conclude that the proposed development (alone) would not result in likely significant effects on European site(s) including the Malahide Estuary SPA and Malahide Estuary SAC. The proposed development would have no likely significant effect in combination with other plans and projects on any European site(s). No further assessment is required for the project. No mitigation measures are required to come to these conclusions.		