

Validation Checklist

Lodgement Number : LDG-070763-24
Case Number: ABP-319343-24
Customer: **in Swift Property Holdings Unlimited Company**
Lodgement Date: 20/03/2024 16:20:00
Validation Officer: **Patrick Buckley**
PA Name: **Fingal County Council**
PA Reg Ref: **LRD0006/S3**
Case Type: **Appeal - LRD**
Lodgement Type: **Appeal - LRD**



An
Bord
Pleanála

Validation Checklist	Value
Confirm Classification	Confirmed - Correct
Confirm PA Case Link	Confirmed-Correct
Confirm ABP Case Link	Confirmed-Correct
Fee/Payment	Valid – Correct
Name and Address available	Yes
Agent Name and Address available (if engaged)	Yes
Subject Matter available	Yes
Grounds	Yes
Sufficient Fee Received	Yes
Received On time	Yes
3rd Party Acknowledgement	No
Eligible to make lodgement	Yes
Completeness Check of Documentation	Yes
Valid Lodgement Channel	Yes

LARGE SCALE RESIDENTIAL DEVELOPMENT – FIRST v Refusal

LRD01 to appellant – enclose receipt
LRD07 to Planning authority – enclose copy of appeal

Date stamp all drawings
Keep copy of all letters issued
Full description on inside of file cover
Update system with dates
Pink File cover

PA notified by email 21/03/24 LQ

Notes to file : EIAR with application – ensure available on website updated at
 compiling/screening
 Revised NIS lodged with appeal- revised notices might be required

Lisa Quinn

From: Planning Appeals <planningappeals@fingal.ie>
Sent: Thursday, March 21, 2024 3:05 PM
To: Lisa Quinn
Subject: Appeal - LRD0006/S3

Caution: This is an **External Email** and may have malicious content. Please take care when clicking links or opening attachments. When in doubt, contact the ICT Helpdesk.

Hi Lisa,

A decision to REFUSE PERMISSION was made on 22/02/24 in respect of LRD0006/S3 (Lands off Flemington Lane, Balbriggan, Co. Dublin)

The full development description is as follows:

Dean Swift Property Holdings Unlimited Company, intend to apply for a ten-year planning permission for a Large Scale Residential Development (LRD) on lands located off Flemington Lane, Balbriggan, Co. Dublin. The application site comprises an area of 22.62 ha, and is located to the south of Flemington Lane, to the east of Clonard Road (also known as Bridgefoot Road) (L1130 Local Road), to the west of Hamlet Lane and to the north and west of the Taylor Hill residential development. The subject site also includes a section of the existing Boulevard Road (also known as Taylor Hill Boulevard) and a section of the junction between Boulevard Road (also known as Taylor Hill Boulevard) and Naul Road (R122 Regional Road) to the south.

The proposed development will consist of:

(i) The demolition of an existing single storey dwelling (151sq.m) (Eircode K32 KR40), associated single-storey storage shed (14.9sq.m), and larger single-storey agricultural shed outbuilding (366sq.m), all of which are located to the south of Flemington Lane.

(ii) The construction of 564 no. dwelling units, consisting of 378 no. houses ranging in height from two to three storeys (127 no. terraced two-bedroom houses; 5 no. three-bedroom detached houses; 156 no. three-bedroom semi-detached houses; 76 no. three-bedroom terraced houses; and 14 no. four-bedroom detached houses); 28 no. duplex blocks, ranging in height from two to three storeys, comprising 84 no. duplex units (22 no. one-bedroom duplexes, 36 no. two-bedroom duplexes and 26 no. three-bedroom duplexes) and 10 no. apartment blocks (FM1, FM2, M1, M2, FP1, HN1, HC1, HC2, HC3, and HS1) ranging in height from three to five storeys, comprising 102 no. apartments (35 no. one-bedroom apartments and 67 no two-bedroom apartments). The proposed development is set out into 5 no. key Character Areas as follows; Hampton Park South (southern-most portion of the site), Hampton Park Central (central-western portion of the site), Tanners Lane (central-eastern portion of the site), Hampton Park North (north-western portion of the site) and Flemington Park (north-eastern portion of the site). The number and mix of units comprised within each of these Character Areas is detailed as follows:

(a) Hampton Park South Character Area - containing a total of 103 no. dwelling units, consisting of 71 no. houses, all of which are two storeys in height (46 no. three-bedroom semi-detached houses, 1 no. three-bedroom detached house, 8 no. three-bedroom terraced houses, and 16 no. two-bedroom terraced houses); 5 no. duplex blocks, ranging in height from two to three storeys, consisting of (5 no. one-bedroom duplexes; 9 no. two-bedroom duplexes and 4 no. three-bedroom duplex) and 1 no. apartment block (HS1) which is four storeys in height and consist of 14 no. apartments (6 no. one-bedroom units; 8 no. twobedroom units).

(b) Hampton Park Central Character Area - containing a total of 142 no. dwelling units, consisting of 88 no. houses ranging in height from two to three storeys (26 no. three-bedroom semi-detached houses; 22 no. three-bedroom terraced houses, 4 no. three-bedroom detached houses and 36 no. two-bedroom terraced houses) 7 no. duplex blocks all of which are three storeys in height, consisting of 18 no. duplex units (2 no. one-bedroom duplexes, 9 no. two-bedroom duplexes and 7 no. three-bedroom duplexes) and 3 no. apartment blocks (HC1, HC2 and HC3) ranging in height from three to five storeys, consisting of 36 no. apartments (17 no. one-bedroom units and 19 no. two-bedroom units). The Hampton Park Central Character Area also comprises 1 no. two storey childcare facility with an area of 354sq.m.

(c) Tanner's Lane Character Area - containing a total of 54 no. dwelling units, consisting of 36 no. houses all of which are two storeys in height (26 no. three-bedroom semi-detached houses; 4 no. three-bedroom terraced houses and 6 no. two-bedroom terraced houses), 3 no. duplex blocks, all of which are three storeys in height, consisting of 2 no. duplex units (1 no. one-bedroom duplex, 6 no. two-bedroom duplexes and 5 no. three-bedroom duplexes) and 1 no. apartment block (M2) which is three storeys in height, consisting of 6 no. apartments (6 no. two-bedroom units).

(d) Hampton Park North Character Area - containing a total of 128 no. dwelling units, consisting of 84 no. houses ranging in height from two to three storeys (28 no. two-bedroom terraced houses; 38 no. three-bedroom semi-detached houses and 18 no. three-bedroom terraced houses), 8 no. duplex blocks ranging in height from two to three storeys, consisting of 24 no. duplex units (7 no. one-bedroom duplexes; 9 no. two-bedroom duplexes and 8 no. three-bedroom duplexes) and 2 no. apartment blocks (HN1 and M1) ranging in height from three to four storeys, consisting of 20 no. apartments (6 no. one-bedroom units and 14 no. two-bedroom units). The Hampton Park North Character Area also comprises 1 no. two storey childcare facility with an area of 494.6sq.m.

(e) Flemington Park Character Area - containing a total of 137 no. dwelling units, consisting of 99 no. houses all of which are two storeys in height (41 no. two-bedroom terraced houses; 20 no. three-bedroom semi-detached houses, 24 no. three-bedroom terraced houses and 14 no. four-bedroom detached houses); 5 no. duplex blocks ranging in height from two to three storeys, consisting of 12 no. duplex units (7 no. one-bedroom duplexes, 3 no. two-bedroom duplexes and 2 no. three-bedroom duplexes) and 3 no. apartment blocks (FM1, FM2 and FP1) ranging in height from three to four storeys, consisting of 26 no. apartments (6 no. one-bedroom units and 20 no. two-bedroom units). The Flemington Park Character Area also comprises 1 no. two storey childcare facility with an area of 379 sq.m. All ground floor apartments have access to private terraces; all upper-level apartments have access to private balconies, and all houses have access to private rear gardens.

The proposed development also includes:

(iii) the construction of 9 no. commercial units (totalling 593.2 sq.m.) and 6 No. communal units (totalling 315.1 sqm) all of which are located at the ground floor levels of apartment blocks HS1, HC1, HC2, HC3, HN1 and FP1).

(iv) the construction of 2 no. primary vehicular/pedestrian entrances, one from the southeast (upgrade of existing access from Boulevard Road (also known as Taylor Hill Boulevard)) and one from the north (off Flemington Lane), the construction of a secondary access route from the east (access from Hamlet Lane), the construction of 5 no. tertiary access routes (access from Flemington Park, Hastings Avenue, Hastings Drive, Hastings Lawn and Taylor Hill Grange) and the construction of a new main spine road through the site.

(v) the provision of Class 1 Public Open Space in the form of a playing pitch (c. 2.86ha) located to the east of Clonard Road (also known as Bridgefoot Road) (L1130 Local Road), within the western extent of the subject site, this public park is immediately west of an existing playing field which was approved under a separate application. A number of smaller Class 2 Public Open Space areas and communal open space areas to are also proposed throughout the site.

(vi) a total of 927 no. car parking spaces are proposed, this includes 806 no. resident parking spaces, 94 no. visitor spaces, 11 no. disabled parking spaces (numbers include 162 no. EV points), 7 no. spaces allocated to creche parking and 9 set down spaces. A total of 2,014 no. bicycle spaces are proposed, this includes 1,326 no. resident bicycle spaces, 640 no. visitor spaces and 48 no. spaces allocated to creche bicycle parking. Planning permission is also sought for landscaping and infrastructural works, foul and surface water drainage, bin storage, 2 no. ESB substations, open space areas including playgrounds, boundary treatments, internal roads, footpaths and cycle paths and all associated site works to facilitate the development. An Environmental Impact Assessment Report (EIAR, formerly known as an EIS) accompanies the application.

The application and EIAR may also be inspected online at the following website set up by the applicant: flemingtonlaneLRD.ie

An EIAR was received with this application.

No NIS was received with this application.

This application IS an LRD application.

Regards,

Alison Rothwell Clerical Officer Fingal County Council Planning & Strategic Infrastructure Department
County Hall Main Street Swords Co. Dublin K67 X8Y2

Telephone : 01 8708411

Email: alison.rothwell@fingal.ie

Comhairle Contae
Fhine Gall
Fingal County
Council



From: Lisa Quinn <L.Quinn@pleanala.ie>
Sent: Thursday, March 21, 2024 1:12 PM
To: Planning Department <Planning@fingal.ie>
Cc: Patrick Buckley <p.buckley@pleanala.ie>
Subject:

CAUTION: This email originated from outside of Fingal County Council. Do not click on links or open attachments unless you are satisfied of the email's authenticity.

Hi

The Board has received a 1st party appeal for planning reference number LRD0006/S3. (ABP-319343-24) This appeal was received by the Board on 20th March, 2024.

In order for the Board to validate this appeal, can you please confirm the following;

1. Your date of decision
2. Full Development Description
3. If an **EIAR** was submitted with the planning application at any stage?
4. If an **NIS** was submitted with this planning application at any stage?
5. If this planning application is for an **LRD** (Large Residential Development) or if it is for **Normal Planning Application**?

Regards

Lisa Quinn

Lisa Quinn
Executive Officer
Processing Section
An Bord Pleanála
64 Marlborough Street
Dublin 1
D01 V902
Tel: 01-873-7174
Facs: 01-8722684

Má fhaigheann tú an ríomhphost seo lasmuigh de na gnáthuaireanta oibre, ní bheidh mé ag súil le freagra ná gníomh

lasmuigh de d'uaireanta oibre féin.

If you receive this email outside of normal working hours, I do not expect a response or action outside of your own working hours

Smaoinigh ar an timpeallacht sula ndéanann tú an ríomhphost seo a phriontáil.

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Fógra Rúin: Tá an ríomhphost seo agus aon chomhaid atá nasctha leis faoi rún agus dírithe amháin don seolaí. Má bhfuair tú an ríomhphost seo trí earráid, déan teagmháil le bainisteoir an chórais.

Tabhair faoi deara led thoil: aon tuairimí nochtaithe san ríomhphost seo is iad tuairimí an tseoltóra féin agus níl sé intuigthe gurb iad tuairimí An Bhoird Pleanála nó go gcloíonn siad le polasaithe ráite an Bhoird.

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Lisa Quinn

From: Lisa Quinn
Sent: Thursday, March 21, 2024 1:12 PM
To: 'Planning@fingalcoco.ie'
Cc: Patrick Buckley

Hi

The Board has received a 1st party appeal for planning reference number LRD0006/S3. (ABP-319343-24) This appeal was received by the Board on 20th March, 2024.

In order for the Board to validate this appeal, can you please confirm the following;

1. Your date of decision
2. Full Development Description
3. If an **EIAR** was submitted with the planning application at any stage?
4. If an **NIS** was submitted with this planning application at any stage?
5. If this planning application is for an **LRD** (Large Residential Development) or if it is for **Normal Planning Application**?

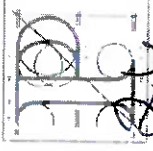
Regards

Lisa Quinn

Lodgement Cover Sheet - LDG-070763-24

LARGES . DEO.

ABP - 319363 - 



An Bord Pleanála

Details

Lodgement Date	20/03/2024
Customer	Dean Swift Property Holdings Unlimited Company
Lodgement Channel	In Person
Lodgement by Agent	Yes
Agent Name	Hughes Planning and Development Consultants
Correspondence Primarily Sent to	Agent
Registered Post Reference	

Lodgement ID	LDG-070763-24
Map ID	
Created By	Imogen McBean
Physical Items Included	No
Generate Acknowledgement Letter	
Customer Ref. No.	
PA Reg Ref	

Categorisation

Lodgement Type	Appeal - LRD
Section	Processing

LRD 0006/S3

PA Name	Fingal County Council
Case Type (3rd Level Category)	

Fee and Payments

Specified Body	No
Oral Hearing	No
Fee Calculation Method	System
Currency	Euro
Fee Value	0.00
Refund Amount	

Observation/Objection Allowed?	
Payment	PMT-055128-24
Related Payment Details Record	PD-054998-24

Decision: 22/2/24
kld. 20/3/24

EIAR - Need to get on web.
Revised NIS - New Notices might be required



An Bord Pleanála,
64 Marlborough Street,
Dublin 1

AN BORD PLEANÁLA
LDG- 070763-24
ABP- 319343-24
20 MAR 2024
Fee: € 3000.00 type: Cheque
Time: 16:11 By: hand

20th March 2023

Re: First Party Appeal against the Decision of Fingal County Council to Refuse Permission for a Large-scale Residential Development (LRD) Application at lands located off Flemington Lane, Balbriggan, Co. Dublin

Fingal County Council Reg. Ref: LRD0006/S3
Date of Planning Authority Decision: 22nd February 2024
Final Date for Lodgement of First Party Appeal: 20th March 2024

Dear Sir/Madam,

Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, have been instructed by our client, Dean Swift Property Holdings Unlimited Company, 5 Clarinda Park North, Dun Laoghaire, Co. Dublin, to submit a first party appeal against the decision of Fingal County Council to refuse to Grant Permission under Reg. Ref. LRD0006/S3, which relates to a Large Scale Residential Development on lands located off Flemington Lane, Balbriggan, Co. Dublin. The description of development as per the statutory notice wording is as follows:

- (i) *The demolition of an existing single storey dwelling (151sq.m), associated storage shed (14.9sq.m), and larger agricultural shed outbuilding to the south of this dwelling (366sq.m), all of which are located to the south of Flemington Lane.*
- (ii) *The construction of 564 no. dwelling units, consisting of 378 no. houses; (127 no. two-bedroom houses; 237 no. three-bedroom houses and 14 no. four-bedroom houses), 84 no. duplex units (22 no. one-bedroom duplexes, 36 no. two-bedroom duplexes and 26 no. three-bedroom duplexes) and 102 no. apartments (35 no. one bedroom apartments and 67 no two-bedroom apartments) as follows:*
 - *Hampton Park South containing a total of 103 no. dwelling units, consisting of 71 no. houses (16 no. two-bedroom houses and 55 no. three-bedroom houses), 18 no. duplex units (5 no. one-bedroom duplexes; 9 no. two-bedroom duplexes and 4 no. three- bedroom duplex) and 14 no. apartments (6 no. 1-bedroom units; 8 no. 2-bedroom units)*
 - *Hampton Park Central containing a total of 142 no. dwelling units, consisting of 88 no. houses (36 no. two-bedroom houses and 52 no. three-bedroom houses), 18 no. duplex units (2 no. one-bedroom duplexes, 9 no. two-bedroom duplexes and 7 no. three-bedroom duplexes) and 36 no. apartments (17 no. 1-bedroom units and 19 no. 2-bedroom units) and 1 no. 379sqm childcare facility*
 - *Tanne's Lane containing a total of 54 no. dwelling units, consisting of 36 no. houses (6 no. two-bedroom houses and 30 no. three-bedroom houses), 12 no. duplex units (1 no. one-bedroom duplex, 6 no. two-bedroom duplexes and 5 no. three-bedroom duplexes) and 6 no. apartments (6 no. 2-bedroom units)*
 - *Hampton Park North containing a total of 128 no. dwelling units, consisting of 84 no. houses (28 no. two-bedroom houses and 56 no. three-bedroom houses), 24 no. duplex units (7 no. one-bedroom duplexes; 9 two-bedroom duplexes and 8 no. three- bedroom duplexes) and 20 no. apartments (6 no. 1-bedroom units and 14 no. 2-bedroom units) and 1 no. 494.6 sqm childcare facility*
 - *Flemington Park containing a total of 137 no. dwelling units, consisting of 99 no. houses (41 no. two-bedroom houses; 44 no. three-bedroom houses and 14 no. four- bedroom houses), 12 no. duplex units (7 no. one-bedroom duplexes, 3 no. two- bedroom duplexes and 2 no. three-bedroom duplexes) and 26 no. apartments (6 no. 1-bedroom units and 20 no. 2-bedroom units) and 1 no. 379sqm childcare facility.*

85 Merrion Square, Dublin 2, D02 FX60
+353 (0)1 539 0710 info@hpdc.ie www.hpdc.ie
H.P.D.C Limited Company Number 517203

All ground floor apartments have access private terraces; all upper-level apartments have private balconies, and all houses have private rear gardens.

- (iii) the construction of 9 no. commercial units (totalling 574.4 sq.m.) and 6 No. communal units (totalling 329.5 sqm) in Hampton Park South, Hampton Park Central, Hampton Park North and Flemington Park.*
- (iv) the introduction of 2 no. primary vehicular/pedestrian entrances, one from the southeast (upgrade of existing access from Boulevard Road) and one from the north (off Flemington Lane), the construction of a secondary access route from the east (access from Hamlet Lane) and the construction of 5 no. tertiary access routes (access from Flemington Park, Hastings Avenue, Hastings Drive, Hastings Lawn and Taylor Hill Gardens).*
- (v) the provision of Class 1 Public Open Space in the form of a playing pitch (c. 2.86ha) located to the east of Clonard Road, and a number of smaller public open space areas and communal open space areas throughout the site.*
- (vi) A total of 927 no. car parking spaces are proposed, this includes 811 no. resident parking spaces, 89 no. visitor spaces, 11 no. disabled parking spaces (numbers include 185 no. EV points), 7 no. spaces allocated to creche parking and 9 set down spaces. A total of 2,014 no. bicycle spaces are proposed, this includes 1,326 no. resident bicycle spaces, 640 no. visitor spaces and 48 no. spaces allocated to creche bicycle parking. Planning permission is also sought for landscaping and infrastructural works, foul and surface water drainage, bin storage, 2 no. ESB substations, open space areas including playgrounds, boundary treatments, internal roads, footpaths and cycle paths and all associated site works to facilitate the development. An Environmental Impact Assessment Report (EIAR, formerly known as an EIS) accompanies the application.*

To support this appeal, please find enclosed the following documentation:

- 1 no. cheque for the appropriate fee of €3,000
- 2 no. copies of the First Party Appeal Report prepared by Hughes Planning and Development Consultants;
- 2 no. copies of Fingal County Council's Notification of Decision to Refuse Permission (Appendix A);
- 2 no. copies of Balbriggan Land Map (Appendix B);
- 2 no. copies of Alternative Design Option Architectural Drawings as prepared by Tégos Architects (Appendix C);
- 2 no. copies of Alternative Design Option Drawings as prepared by IS Design (Appendix D);
- 2 no. copies of Revised NIS and Response Letter as prepared by Altemar Ltd (Appendix E);
- 2 no. copies of Legal Documents as prepared by LK Shields (Appendix F);
- 2 no. copies of Letter regarding Housing Demand in Balbriggan as prepared by Knight Frank (Appendix G).

The enclosed report as prepared by Hughes Planning and Development Consultants sets out the grounds of appeal in greater detail. As such, we request that An Bord Pleanála overturn the decision of Fingal County Council and grant permission for the development as proposed. This appeal is accompanied by the statutory fee of €3,000 and is being submitted within the appropriate timeframe.

We note the appeal fee is classed under First Party Appeals Class A4

- The appeal does not include retention;
- The appeal does relate to commercial development; and
- The appeal or application does include an EIAR or NIS.

Yours Sincerely,


Kevin Hughes MIPI MRTPI
Director For HPDC



HUGHES
PLANNING
& DEVELOPMENT CONSULTANTS

FIRST PARTY APPEAL

LARGE SCALE RESIDENTIAL DEVELOPMENT

FLEMINGTON LANE LRD

LANDS LOCATED OFF FLEMINGTON LANE, BALBRIGGAN,
CO. DUBLIN

FINGAL COUNTY COUNCIL REG. REF. LRD0006/S3

20th MARCH 2024

SUBMITTED ON BEHALF OF:

Dean Swift Property Holdings
Unlimited Company,
5 Clarinda Park North,
Dun Laoghaire,
Co. Dublin (A96 W6N1)

85 Merrion Square, Dublin 2, D02 FX60
+353 (0)1 539 0710
info@hpdc.ie
www.hpdc.ie

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1.0 Introduction

Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, have been appointed by our client, Dean Swift Property Holdings Unlimited Company, 5 Clarinda Park North, Dún Laoghaire, Co. Dublin (A96 W6N1), to prepare this First Party Appeal against the decision of Fingal County Council to refuse planning permission under Reg. Ref. LRD0006/S3. In this instance, we believe the decision of Fingal County Council to have been mistaken, based on erroneous considerations, and respectfully request that the Board overturn this decision.

It is clear from a review of Fingal County Council's assessment reports that no fundamental or material objections were raised by any of the Planning Authority's Internal Departments in respect of this scheme. Some eminently resolvable issues were identified by a number of Departments in the assessment process. The Planning Authority, however, had no mechanism by which to address these resolvable issues and was instead compelled to refuse permission, being constrained by the Large-Scale Residential Development legislative procedure, set out in the Planning and Development (Large Scale Residential Developments) Act 2021 ("the Act"), which precludes the possibility of any subsequent request for a Clarification of Further Information being issued by the Planning Authority. It is therefore with regret that we submit this First-Party Appeal to An Bord Pleanála.

This permission subject to this appeal, relates to a Large-Scale Residential Development, as defined by the Act, comprising **564 no. high-quality dwellings, 3 no. childcare facilities, 9 no. commercial units, 6 no. communal units, in excess of five hectares of Class 1 and 2 Open Space**, and the continuation of the **Flemington Link Road** (formerly known as 'C Ring' Road), a piece critical infrastructure required to realise the potential of residentially zoned lands in northwest Balbriggan, and a long-standing objective of the Fingal Development Plan. The description of development, as per the statutory planning notices submitted at application stage, is as follows:

The proposed development will consist of:

- (i) *The demolition of an existing single storey dwelling (151sq.m) (Eircode K32 KR40), associated single-storey storage shed (14.9sq.m), and larger single-storey agricultural shed outbuilding (366sq.m), all of which are located to the south of Flemington Lane.*
- (ii) *The construction of 564 no. dwelling units, consisting of 378 no. houses ranging in height from two to three storeys (127 no. terraced two-bedroom houses; 5 no. three-bedroom detached houses; 156 no. three-bedroom semi-detached houses; 76 no. three-bedroom terraced houses; and 14 no. four-bedroom detached houses); 28 no. duplex blocks, ranging in height from two to three storeys, comprising 84 no. duplex units (22 no. one-bedroom duplexes, 36 no. two-bedroom duplexes and 26 no. three-bedroom duplexes) and 10 no. apartment blocks (FM1, FM2, M1, M2, FP1, HN1, HC1, HC2, HC3, and HS1) ranging in height from three to five storeys, comprising 102 no. apartments (35 no. one-bedroom apartments and 67 no two-bedroom apartments). The proposed development is set out into 5 no. key Character Areas as follows; Hampton Park South (southern-most portion of the site), Hampton Park Central (central-western portion of the site), Tanners Lane (central-eastern portion of the site), Hampton Park North (north-western portion of the site) and Flemington Park (north-eastern portion of the site). The number and mix of units comprised within each of these Character Areas is detailed as follows:*
 - (a) *Hampton Park South Character Area - containing a total of 103 no. dwelling units, consisting of 71 no. houses, all of which are two storeys in height (46 no. three-bedroom semi-detached houses, 1 no. three-bedroom detached house, 8 no. three-bedroom terraced houses, and 16 no. two-bedroom terraced houses); 5 no. duplex blocks, ranging in height from two to three storeys, consisting of (5 no. one-bedroom duplexes; 9 no. two-bedroom duplexes and 4 no. three- bedroom duplex) and 1 no. apartment block (HS1) which is four storeys in height and consist of 14 no. apartments (6 no. one-bedroom units; 8 no. two- bedroom units).*
 - (b) *Hampton Park Central Character Area - containing a total of 142 no. dwelling units, consisting of 88 no. houses ranging in height from two to three storeys (26 no. three-bedroom semi-detached houses; 22 no. three-bedroom terraced houses, 4 no. three-bedroom detached houses and 36 no. two-bedroom terraced houses) 7 no. duplex*

blocks all of which are three storeys in height, consisting of 18 no. duplex units (2 no. one-bedroom duplexes, 9 no. two-bedroom duplexes and 7 no. three-bedroom duplexes) and 3 no. apartment blocks (HC1, HC2 and HC3) ranging in height from three to five storeys, consisting of 36 no. apartments (17 no. one-bedroom units and 19 no. two-bedroom units). The Hampton Park Central Character Area also comprises 1 no. two storey childcare facility with an area of 354sq.m.

- (c) Tanner's Lane Character Area - containing a total of 54 no. dwelling units, consisting of 36 no. houses all of which are two storeys in height (26 no. three- bedroom semi-detached houses; 4 no. three-bedroom terraced houses and 6 no. two-bedroom terraced houses), 3 no. duplex blocks, all of which are three storeys in height, consisting of 12 no. duplex units (1 no. one-bedroom duplex, 6 no. two-bedroom duplexes and 5 no. three-bedroom duplexes) and 1 no. apartment block (M2) which is three storeys in height, consisting of 6 no. apartments (6 no. two-bedroom units).
- (d) Hampton Park North Character Area - containing a total of 128 no. dwelling units, consisting of 84 no. houses ranging in height from two to three storeys (28 no. two-bedroom terraced houses; 38 no. three-bedroom semi-detached houses and 18 no. three-bedroom terraced houses), 8 no. duplex blocks ranging in height from two to three storeys, consisting of 24 no. duplex units (7 no. one-bedroom duplexes; 9 no. two-bedroom duplexes and 8 no. three-bedroom duplexes) and 2 no. apartment blocks (HN1 and M1) ranging in height from three to four storeys, consisting of 20 no. apartments (6 no. one-bedroom units and 14 no. two-bedroom units). The Hampton Park North Character Area also comprises 1 no. two storey childcare facility with an area of 494.6sq.m.
- (e) Flemington Park Character Area - containing a total of 137 no. dwelling units, consisting of 99 no. houses all of which are two storeys in height (41 no. two- bedroom terraced houses; 20 no. three-bedroom semi-detached houses, 24 no. three-bedroom terraced houses and 14 no. four-bedroom detached houses); 5 no. duplex blocks ranging in height from two to three storeys, consisting of 12 no. duplex units (7 no. one-bedroom duplexes, 3 no. two- bedroom duplexes and 2 no. three-bedroom duplexes) and 3 no. apartment blocks (FM1, FM2 and FP1) ranging in height from three to four storeys, consisting of 26 no. apartments (6 no. one-bedroom units and 20 no. two-bedroom units). The Flemington Park Character Area also comprises 1 no. two storey childcare facility with an area of 379 sq.m.

All ground floor apartments have access to private terraces; all upper-level apartments have access to private balconies, and all houses have access to private rear gardens.

The proposed development also includes:

- (iii) the construction of 9 no. commercial units (totalling 593.2 sq.m.) and 6 No. communal units (totalling 315.1 sqm) all of which are located at the ground floor levels of apartment blocks HS1, HC1, HC2, HC3, HN1 and FP1).
- (iv) the construction of 2 no. primary vehicular/pedestrian entrances, one from the southeast (upgrade of existing access from Boulevard Road (also known as Taylor Hill Boulevard)) and one from the north (off Flemington Lane), the construction of a secondary access route from the east (access from Hamlet Lane), the construction of 5 no. tertiary access routes (access from Flemington Park, Hastings Avenue, Hastings Drive, Hastings Lawn and Taylor Hill Grange) and the construction of a new main spine road through the site.
- (v) the provision of Class 1 Public Open Space in the form of a playing pitch (c. 2.86ha) located to the east of Clonard Road (also known as Bridgefoot Road) (L1130 Local Road), within the western extent of the subject site, this public park is immediately west of an existing playing field which was approved under a separate application. A number of smaller Class 2 Public Open Space areas and communal open space areas to are also proposed throughout the site.
- (vi) a total of 927 no. car parking spaces are proposed, this includes 806 no. resident parking spaces, 94 no. visitor spaces, 11 no. disabled parking spaces (numbers include 162 no. EV points), 7 no. spaces allocated to creche parking and 9 set down spaces. A total of 2,014 no.

bicycle spaces are proposed, this includes 1,326 no. resident bicycle spaces, 640 no. visitor spaces and 48 no. spaces allocated to creche bicycle parking. Planning permission is also sought for landscaping and infrastructural works, foul and surface water drainage, bin storage, 2 no. ESB substations, open space areas including playgrounds, boundary treatments, internal roads, footpaths and cycle paths and all associated site works to facilitate the development. An Environmental Impact Assessment Report (EIAR, formerly known as an EIS) accompanies the application.'

Prior to a final determination being made, a Request for Further Information was issued by Fingal County Council on 16th October 2023. All items were thoroughly considered and addressed by the Applicant and, as such, the scheme was subject to slight amendments on foot of this request, including an update to the Boulevard Road/R122 junction, a revised shared surface design, minor updates to Class 2 public open space areas, and a revised allocation of 2,552 no. bicycle parking spaces. The Further Information Response was also accompanied by a comprehensive and up-to-date Natura Impact Statement and a fully up to date § Environmental Impact Assessment Report (EIAR), and was submitted to the Planning Authority on 20th December 2023. For the benefit of the Board, full details and all application and further information documents are available in the following website address: <https://flemingtonlaneird.ie/>.

Upon our review of the Planning Authority's lengthy assessment of this case, it is apparent that the Planning Authority's Internal Departments had no objection to the proposal, subject to conditions, with none making any reference to a recommendation to refuse on the basis of the minor matters raised in their reports. It is our considered view that the only real item of substance in the Planning Authority's refusal relates to Refusal Reason No. 2 and the Planning Authority's view that it could not be concluded beyond reasonable doubt that the scheme would not impact on Natura 2000 sites or their qualifying interests based on the data presented by the Applicant. Whilst the Applicant contends that the data submitted was sufficient for the Planning Authority to make a determination in this regard, data for December 2023 and January 2024 has now been provided to the Board in the updated NIS submitted with this appeal – representing a full and comprehensive suite of data on which to assess the impact or lack thereof of the project on surrounding sites. The Applicant's highly qualified Project Ecologist did not concur with the Planning Authority's conclusion regarding the sufficiency of the data presented but acknowledges that in principle a doubt in relation to ecological impact may preclude a grant of permission. The remaining two Refusal Reasons (Nos. 1 and 3) are, in the Applicant's submission, not substantive and could have easily and satisfactorily been addressed by way of condition. This submission will be detailed further in the following sections of this appeal.

The refusal was issued by Fingal County Council's Planning Department on 22nd February 2024, with three refusal reasons being listed. A copy of Fingal County Council's Notification of Decision to Refuse Permission in respect of Reg. Ref. LRD0006/S3, is attached in Appendix A of this report.

The requisite statutory appeal fee of €3,000 (Application includes NIS and EIAR), is enclosed with this Appeal.

The subsequent sections of this appeal set out the Applicant's detailed responses to the Planning Authority's Notification of Decision and the associated commentary included in the Case Officer's Report. A limited number of design revisions, primarily relating to the public open space provision have been made as an Alternative Design Option for the Board's consideration. These will be detailed later in this document.

In advance of providing this response a brief overview of the history of the project and the Applicant's group continued contribution to Balbriggan and Fingal is provided hereunder.

1.1 Project Background – Extant Permission and Pre-Planning Consultations

There is a detailed planning history attached to the subject lands which is relevant to the Board's consideration in this appeal. Importantly, the site already has the benefit of an extant planning permission under Reg. Ref. **F08A/1329 (as extended under F08A/1329/E1)** which has effect until 23rd February 2025. Whilst our client could have built out this permission, their aspiration was to improve the overall quality of development to be provided at this location, aligning the development with modern

design standards and guiding policy requirements. Our client has invested significantly in making this aspiration a reality, creating a higher quality, appropriately scaled residential scheme featuring a broad mix of tenure types, coupled with the commensurate delivery of social, community and physical infrastructure to serve not only the proposed 564 no. dwellings, but also the wider northwest Balbriggan Area. This extant permission provided the template for the improved layout and design submitted under the recent LRD application and establishes with certainty the acceptability in principle of a residential development of this scale on the subject lands.



Figure 1.0 Extract from the site layout plan as approved by Fingal County Council under Reg. Ref. F08A/1329 and ABP Ref. PL06F.235048 (and as extended under Reg. Ref. F08A/1329).

In addition to the site's extant permission, it is prudent to also reiterate that the development of the appeal lands has been subject to an extensive iterative design process between a multi-disciplinary team of expert consultants who, in consultation with the Applicant, have revised the design to provide a scheme that appropriately addresses the various qualitative and quantitative requirements of Fingal County Council, included as part of the Fingal Development Plan 2023-2029. The original intention of the team was to submit the proposed development as a Strategic Housing Development (SHD) application, and multiple pre-planning meetings with Fingal County Council and An Bord Pleanála were undertaken as part of this, in addition to those which were subsequently undertaken as part of the LRD process. The below table emphasises to the Board the extent of pre-planning consultation discussions, both formal and informal, which have been undertaken prior to any application being submitted in respect of the lands. Full details of the contents of these consultations may be found in the *Planning Report and Statement of Consistency* prepared by Hughes Planning and Development Consultants and submitted at application stage.

SHD Pre-Planning Consultations	
Meeting No.	Date
1. Non Statutory Meeting with FCC	21 st May 2019
2. Formal S. 247 Meeting with FCC	7 th August 2019
3. Formal S. 5 Pre-Planning Meeting with FCC and ABP	7 th December 2020
LRD Pre-Planning Consultation	

4. Formal S. 247 Meeting with FCC	14 th April 2021
5. Non Statutory Meeting with FCC Transport	1 st December 2021
6. Non Statutory Meeting with FCC Transport	2 nd March 2022
7. Formal S. 247 Meeting with FCC	25 th March 2022
8. Formal S. 247 Meeting with FCC	12 th August 2022
9. Formal S. 32C LRD Meeting with FCC	26 th January 2023
10. Non Statutory Meeting with FCC Transport	10 th March 2023

Table 1: Listing of Pre-Planning Consultation Meetings Undertaken in Advance of Submission

Clearly a consultative development approach has been adopted by the Applicant in relation to this scheme and, moreover this is evident in the various Fingal County Council Internal Department Reports relating to the development and available on the Planning Authority's Planning Registry which do not, in any case, recommend a refusal of permission, and indeed in the largely insubstantial reasons for refusal included in the Planning Authority's determination of 22nd February 2024.

Every effort has been made in the case of this application and appeal to address the concerns of the Planning Authority and it must be recognised that this scheme facilitates the prompt delivery of a significant amount critical road, recreation and social infrastructure, all of which are undoubtedly needed to support the compact growth of Balbriggan – a Key Service Centre in the Eastern and Midlands Area Regional Spatial and Economic Strategy - undertaken primarily at the expense of the developer. Development of such critical infrastructure and the provision of a significant amount of well-situated housing stock is also in line with Fingal County Council's Balbriggan Socio-Economic Strategy and the Balbriggan Integrated Action Plan 2022-2027 Balbriggan is identified in the Fingal County Development Plan 2023-2029 as a Self-Sustaining Town requiring "*contained growth, focusing on driving investment in services, employment growth and infrastructure whilst balancing housing delivery.*" The proposed development delivers precisely the compact growth, infrastructure development, and housing delivery envisaged by the County Development Plan.

Having regard to the principle established by the extant 2008 permission, the very extensive pre-planning consultation which has been undertaken and the lack of any recommendation for refusal by the various Internal Departments, we do not consider that a refusal for this 564 no. unit scheme was justified by the Planning Authority, particularly at a time when the county and State is facing an acute housing shortage. Evidence of the need for housing in Balbriggan is included, as a letter from Knight Frank, found at Appendix G of this report.

The Applicant maintains that the proposed development is wholly appropriate for the subject site, as such we trust the Board will have due regard to the clear merits of the scheme and see fit to overturn the decision of the Planning Authority and Grant Permission, subject to appropriate conditions.

1.2 Commitment of the Applicant to the Development of Balbriggan

From the outset of this appeal, we wish to highlight to the Board that the Applicant, Dean Swift Property Holdings and their associated subsidiaries, have built up a good working relationship and strong rapport with Fingal County Council which has spanned over many years. Our client is a reputable, astute property developer which has contributed to the development of Balbriggan considerably over a number of years, having a strong record of high-quality housing delivery and the supply of lands to the Planning Authority. This contribution includes the delivery of over 1,000 homes, across the following developments:

- **175 no.** homes comprising three-bed units at **Chapel Gate, Balbriggan;**
- **150 no.** homes comprising three and four bed units at **Ashfield, Balbriggan;**
- **Over 500 no.** three and four bed semi-detached and detached homes comprised within Phase 1 and 2 of the **Westbrook Development, Balbriggan;**

- **74 no.** three-bed detached homes at **Hampton Woods, Balbriggan**; and
- **16 no.** detached homes and **45 no.** two and three bed apartments at **Prospect, Balbriggan**.

In their commitment to the development of Balbriggan, the Applicant has also transferred significant tracts of land to Fingal County Council in good faith, to facilitate the delivery of a number of key infrastructure and community projects, including the following:

Record of Transfer of Lands to Fingal County Council	
1.	St. George's Primary School, Naul Road, Balbriggan – Lands with an extant permission were requested by Fingal County Council and Department of Education to build a temporary school, at a time when there was a shortage of school places. The temporary school became permanent school
2.	Coláiste Ghlór na Mara – Land transferred for this school site
3.	Bremore Educate Together and Scoil Chormaic CNS, Stephenstown, Balbriggan – Land transferred to Dept of Education in order to accommodate the school shortages in Balbriggan area at the time
4.	Clonard Boulevard Road – Built and funded entirely by the Applicant Group to facilitate access to secondary schools and enhance connectivity to the wider north-west lands.
5.	Council required land for pump station and Reservoir in Balbriggan – Land transferred to Council
6.	Naul Road Widening – Land transferred to Council
7.	Castlemills Link Road – Land transferred to council <u>at no cost</u> to alleviate issues with HGV Traffic in Moylaragh estate
8.	Road opposite Castlemills Link Road (Road 9) – Land transferred to Council to open up the link to Millfield shopping centre
9.	Stephenstown, Balbriggan Outer Relief Road – Land transferred to council to allow the outer relief road to be built at no cost.
10.	Harry Reynolds Road, Balbriggan – Land transferred to Council to allow for road to be built
11.	Construction of Taylors Hill Boulevard – Undertaken and funded entirely by the Applicant Group.
12.	Built Phase 1 of Park Northwest Balbriggan Lands – Phase 1 Public Park including play pitch delivered on the northwest Balbriggan lands and is ready for Fingal County Council to take in charge.

Table 2: Record of Land Transfers made by the Applicant to Fingal County Council





Figure 2.0 Suite of image showing the Class 1 Public Park (top) Coláiste Ghlór na Mara (bottom left) and Bremore Educate Together (bottom right). Note the land was delivered in full by the Applicant and transferred to the Planning Authority for the provision of the referenced schools.

The vast extent of lands referenced in the above table and the delivered housing developments by the Applicant have been annotated on the drawing extract below for context.

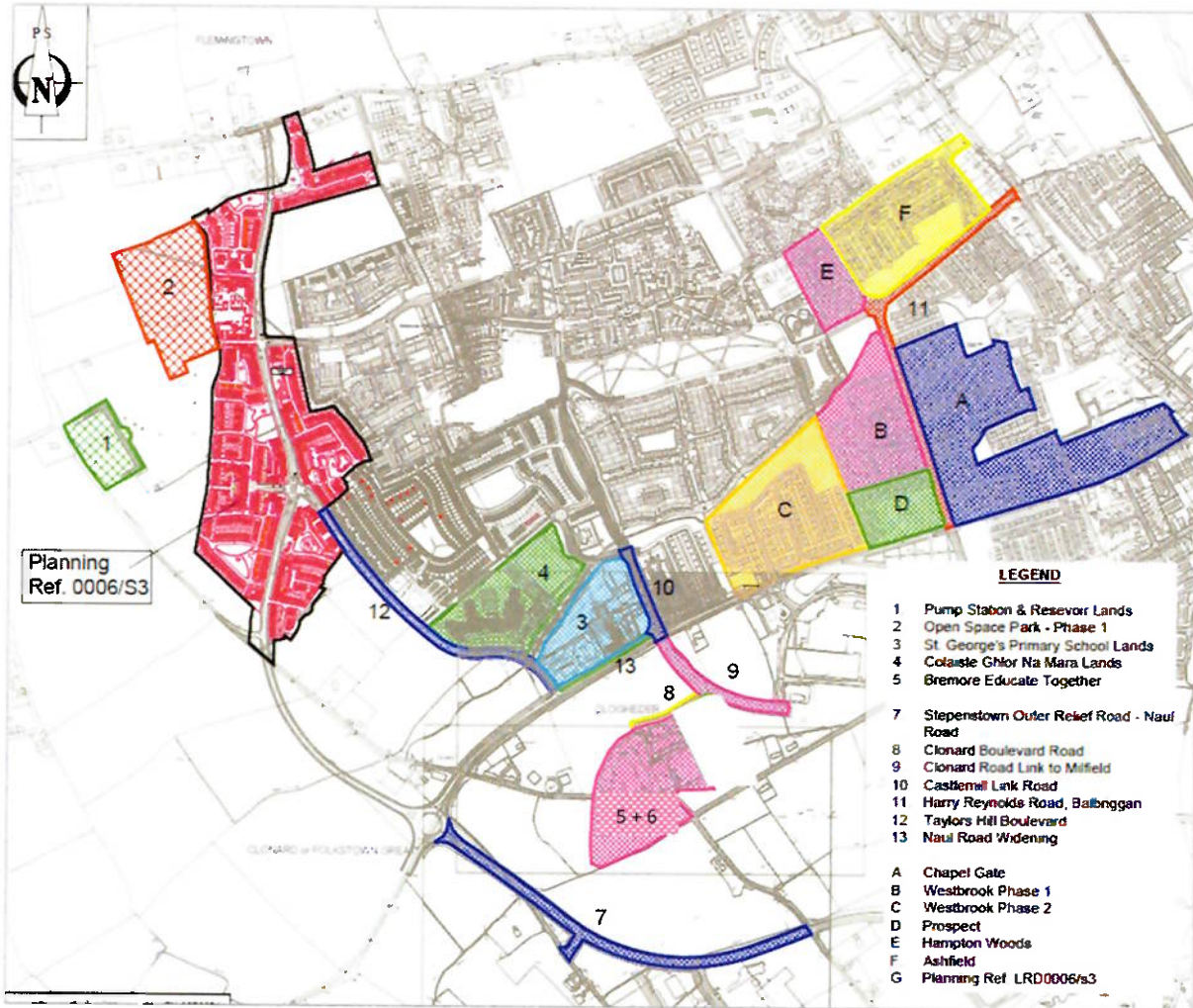


Figure 3.0 Map for illustrative purposes showing lands which have been developed by the Applicant or which have been previously transferred to Fingal County Council to facilitate infrastructure delivery.

Having regard to the foregoing, the Applicant's contribution to the plan-led development of Balbriggan is a matter of record and, as part of the within LRD application, it is intended to build upon this contribution through the provision of an additional **564 no.** quality residential units, and associated physical, social and community infrastructure, thus facilitating the sustainable expansion of Balbriggan on appropriately zoned and serviced lands.

It is the Applicant's submission that its track record, and well-established *bona fides*, are matters which are appropriate for the Board to consider in the context of this appeal.

1.3 Relevant Appendices

In addition to the contribution Hughes Planning and Development Consultants, this Appeal has been assembled with input from the following project team members:

- Tégos Architects (formerly Ferreira);
- IS Design (Landscape);
- Altemar Ltd, Marine and Environmental Consultants; and
- LK Shields.

Inputs from the above team members are enclosed with this submission with the Architectural and Landscape Drawings, forming part of the Alternative Design Option put forward. This Alternative Design Option relates exclusively to the proposed public open space areas with incremental changes being made throughout which result in an overall increased provision.

This will be discussed further in the subsequent sections and whilst we would respectfully ask the Board to consider the scheme as submitted at Further Information Stage (Reg. Ref. LRD0006/S3) in the first instance, should the Board consider the Alternative Design Option to be more appropriate, the Applicant would have no objection to this option and the associated changes being implemented by way of condition.

The inputs prepared by Altemar Ltd., in support of this appeal include a revised NIS (including additional Bird Survey Results) and a letter responding directly to Refusal Reason No. 2 and the associated commentary included in Fingal County Council's Case Officer's Report.

In response to Refusal Reason No. 3, we enclose herewith a copy of the following draft legal documents prepared by LK Shields which relate to the transfer of lands to the south of the site to facilitate the delivery of the 'C-Ring Road' by Fingal County Council. We consider that this disposes entirely of this ground of refusal. Please consult the schedule of documents below for full clarity:

Schedule of Appeal Documents	
Design Team Member	Document/Drawing
Dean Swift Property Holdings (Appendix B)	Balbriggan Land Map
Tégos Architects (Appendix C)	Drawing No. 1902_SITE_0517-A (Phasing) Drawing No. 1902-SITE-0511A (Open Space) Drawing No. 1902-SITE-0519A (Phasing) Drawing No. 1902-SITE-0520 (Site Layout) Drawing No. 1902-SITE-0521 (Site Layout Sheet No. 1) Revised Statistics Sheet for Alternative Design Option
IS Design (Landscape) (Appendix D)	202403_MAL-019-20-P01_RevB 202403_MAL-019-20-P02_RevB 202403_MAL-019-20-P04_RevB 202403_MAL-019-20-P05_RevB 202403_MAL-019-20-P06_RevB 202403_MAL-019-20-P07_RevA 202403_MAL-019-20-P08_RevB

	202403_MAL-019-20-P19_RevA 202403_MAL-019-20-P20_RevA 202403_MAL-019-20-P21_RevA 202403_MAL-019-20-P22_RevA 202403_MAL-019-20-P23 202403_MAL-019-20-P24 202403_MAL-019-20-P25
Altamar Ltd. (Appendix E)	Revised NIS Response Letter
LK Shields (Appendix F)	Draft Transfer Deed Draft Family Law Declaration Section 72 Declaration

Table 3 Schedule of Appeal Documents

2.0 Site Description and Context

The appeal site consists of a large parcel of land (c.22.62ha) located to the south of Flemington Lane, in northwest Balbriggan. The subject land is presently associated with agricultural use and is comprised of a number of fields. The site is located c.600 metres from Castle Mill Shopping Centre and c.1.5 km from Millfield Shopping Centre both of which provide a range of services and include a supermarket. The site is also c.2.4 km from Balbriggan town centre.

With respect to public transport, the subject site is located 2.5 km from Balbriggan Train Station which provides frequent services into Dublin City as well as intercity services along the east coast. Balbriggan is also well connected to Dublin by bus services operated by Bus Éireann and Dublin Bus. Bus service is provided by Dublin Bus routes 33, 33A and 33X as well as Bus Éireann routes 101 (Dublin-Drogheda) and 104 (Balbriggan Town Service). A private bus service is provided from Millfield Shopping Centre to Dublin City Centre by Balbriggan Express. The M1 motorway is 1.3km from the subject site and provides vehicular access to Dublin and the national motorway network.



Figure 4.0 Aerial image showing the appeal site (red star) in the context of its wider environs.



Figure 5.0 Aerial Image showing the appeal site (red outline) in the context of its more immediate surrounds.

2.1 Summary of Development Submitted to Fingal County Council at Further Information Stage Under Reg. Ref. LRD0006/S3

The proposed development, as revised on foot of a Further Information Request, in summary comprises the demolition of an existing single storey dwelling (c. 151sq.m) and an associated shortage shed located within its curtilage (14.9sq.m), and a larger agricultural shed outbuilding located further south of this dwelling (366sq.m), all of which are located to the immediate south of Flemington Lane, to facilitate the construction of a mixed-use residential and commercial scheme comprising a total of 564 no. dwelling units (378 no. houses, 84 no. duplex units and 102 no. apartments). The proposal also includes the provision of 9 no. commercial units and 6 no. communal units.

Also included as part of the scheme is the creation of a link road from Flemington Lane to the north, through the central portion of the site, running in a north south direction. This link road provides a central access route to serve all units within the proposed development. The provision of this road infrastructure is also a long-standing objective of the Fingal County Development Plan 2023-2029. It is also noted that the Boulevard Road is constructed and operational with the redline proposed only around the areas where connections are possible.

In terms of car parking and bicycle parking provision, the proposal includes a total of 927 no. car parking spaces, which is inclusive of 806 no. resident spaces, 94 no. visitor spaces, 11 no. disabled parking spaces (numbers include 162 no. EV points), 7 no. spaces allocated to the creche facilities and 9 no. set-down spaces. A total of 2,552 no. bicycle parking spaces are proposed, including 1,956 no. resident spaces, 596no. visitor spaces, and 48 no. spaces allocated to the proposed creche facilities.

The key development statistics are also outlined again below for ease of reference:

Key Development Statistics	
Site Area	Total Site Area – 22.62ha Residential Site Area – 19.28ha
Demolition	Derelict House and Shed – 165.9sq.m

	<i>Large Outhouse/Shed = 366sq.m</i>				
	Total Demolition – 531.9sq.m				
Total No. of Residential Units	546 no.(Total)				
	<i>House Units</i>		<i>Duplex Units</i>		<i>Apartment Units</i>
	378 no.		84 no.		102 no.
No. of Units Per Character Area	<i>Flemington Park</i>	<i>Hampton Park North</i>	<i>Hampton Park Central</i>	<i>Hampton Park South</i>	<i>Tanners Lane</i>
	137 no.	128 no.	142 no.	103 no.	54 no.
Total No. of Commercial Units Proposed	9 no. (593.2sq.m)				
Creche Units	3 no. (1,227.6sq.m)				
Proposed Building Heights	2-5 storeys				
Public Open Space	Class 1 Public Open Space – 2.86ha				
	Class 2 Public Open Space – 2.268ha				
Car Parking Provision	927 no. car parking spaces (806 no. resident spaces, 94 no. visitor spaces, 11 no. disabled parking spaces, 7 no. spaces for creches and 9 no. set-down spaces)				
Bicycle Parking Provision	2,552no. bicycle spaces (1,956 no. resident spaces, 596 no. visitor spaces and 48 no. spaces for proposed creches)				
Density	Net Density – c. 35.13 dph				
Plot Ratio	Plot Ratio as % of 19.28ha (Residential Site Area) – 0.2843				
Site Coverage	Site Coverage as a & of 19.28ha (Residential Site Area) – 16.36%				

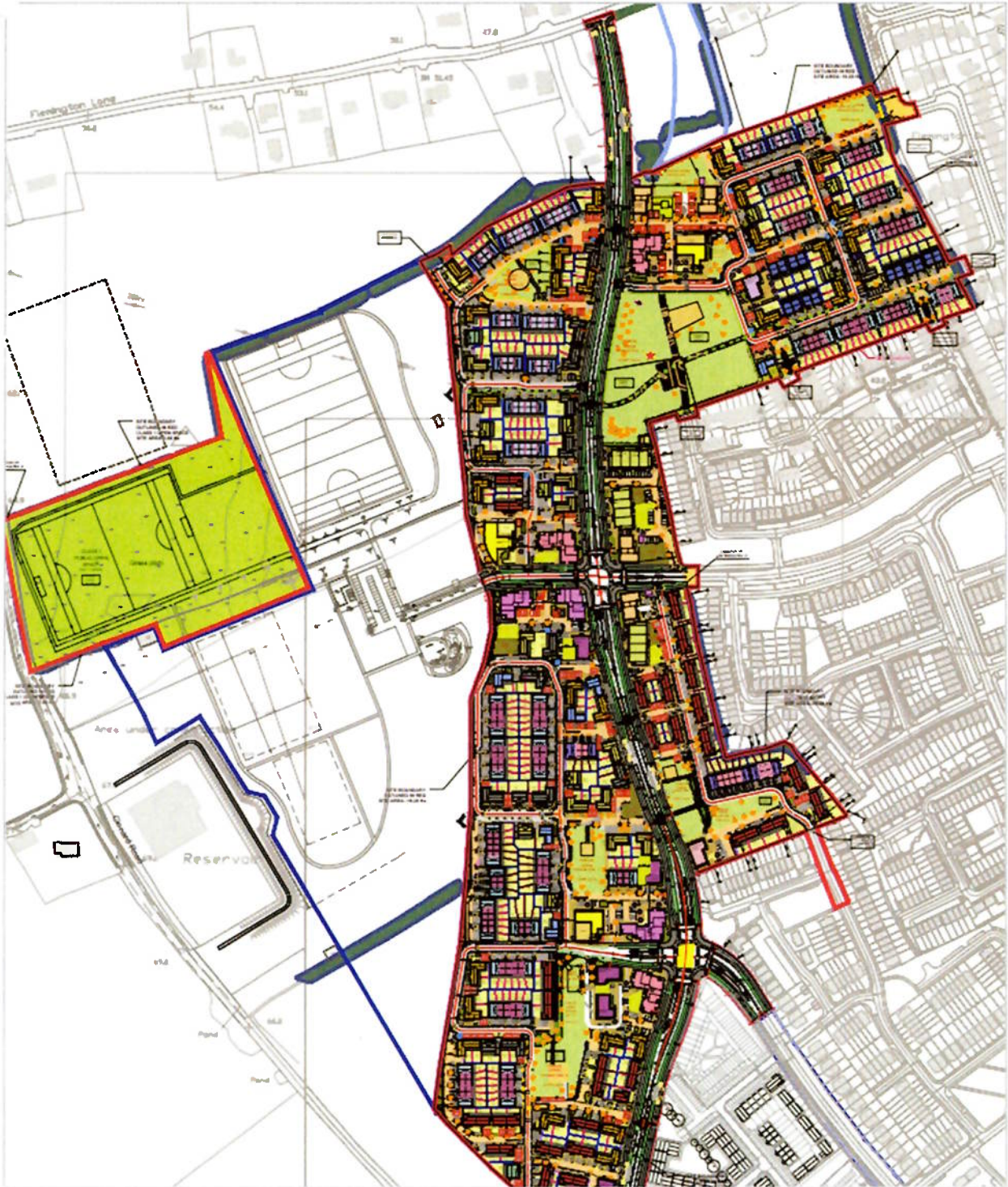


Figure 6.0 Extract from the Site Layout Plan as submitted at Further Information Stage under Red. Ref. LRD0006/S3



Figure 7.0 Various CGI Views of the Proposed Development

3.0 Decision of Fingal County Council

The Council's Decision to refuse permission (a copy of which is included at Appendix A) was issued on 22nd February 2024 and was based upon the following 3 no. refusal reasons:

1. *The design and layout of the proposed development, particularly in relation to its failure to provide for high quality public open spaces; the unresolved nature of the southern alignment and layout of the C-Ring/Spine Road and achievement of wider connectivity opportunities and given the deficiencies in the establishment of appropriate phasing arrangements, would result in a substandard residential development providing a poor-quality environment for future residents; which would be deficient in the timely delivery of necessary and supporting infrastructure, and would fail to contribute to the achievement of enhanced connectivity and sustainable travel opportunities to serve northwest Balbriggan. The development would therefore seriously injure the amenities of future residents of the scheme and would seriously injure the amenities of property in the vicinity of the site. The development would therefore be contrary to the proper planning and sustainable development of the area.*
2. *Insufficient information is available to the Planning Authority to enable it as the competent authority to determine whether the proposed development individually, or in combination, with other plans or projects would not adversely affect the integrity of nearby European Sites or their qualifying interests. Accordingly, the planning authority cannot conclude beyond reasonable doubt that the development would not impact Natura 2000 sites in the vicinity or have a detrimental impact on their qualifying interests. The Planning Authority is therefore precluded from granting permission for the proposed development.*

3. *The proposed development, having regard to the lack of clarity in relation to the transfer of lands to the south of the site which would assist in the timely delivery of transportation schemes and provision of enhanced connectivity and sustainable travel opportunities to serve northwest Balbriggan, would contravene materially Objective CMO41 of the Fingal Development Plan 2023-2029 which sets out the Council's proposals for the development of the County's transportation network. The development as proposed would therefore be contrary to the proper planning and sustainable development of the area.*

It is unfortunate that the Planning Authority felt compelled to refuse permission for the proposal, particularly give that the only refusal item of any substance is Item No. 2 (which we say was based on a mistaken assertion that insufficient data had been submitted and which could, in any event, have been cured with the simple submission of additional data). We are fully confident in and satisfied with the quality of the scheme submitted at Further Information Stage and this, in many ways is reflected in the various Fingal County Council Internal Departmental Reports in respect same, none of which recommend a refusal of permission and considered that any concerns could be addressed through the attachment of appropriately worded conditions. It is our contention that Items Nos. 1 and 3 referenced above are not substantive reasons warranting a refusal of permission and could have easily been satisfied by the Planning Authority through the application of appropriate conditions to a grant of permission. Whilst we appreciate further comfort was sought as part of Refusal Reason No. 2, in our view to refuse a scheme of this nature, providing in excess of 560 no. units together with a significant element of long-awaited critical road infrastructure, based on the above refusal reasons, was unreasonable, particularly considering that the site already has the benefit of an extant permission and the extensive pre-planning consultation that took place prior to submission. .

Our views in this regard were confirmed following a review of Fingal County Council's Case Officer's Report (Chief Executive's Order dated 22nd February 2024), the commentary from which clearly indicates the merit of the proposal. The extract below is completely contrary to the refusal that followed:

'In conclusion, it is agreed that the Proposed Development has been carefully designed, taking into consideration the site context and existing and planned neighbouring commercial and residential properties and the local environment conditions, including biodiversity, landscape, traffic, noise and vibration and visual impact.'

The Board will note that the Case Officer specifically confirms that "*the Proposed Development has been carefully designed...*", but that Refusal Reason No. 1 states a view that "*the design and layout of the proposed development... would result in a substandard residential development.*" It is not at all clear how this latter assessment was arrived at, given that it is clearly not based on anything in the Case Officer's Report, and indeed is directly contradictory to the conclusions of that Report.

Furthermore, it is apparent from a review of Fingal's Departmental Reports that there were no fundamental flaws identified with the scheme design that were not capable of being addressed by way of condition. A summary of these responses is provided hereunder:

Water Services Report Dated 24th January 2024

- No objection to the proposed development subject to conditions.

Transport Planning Report Dated 6th February 2024

- No objection to the proposed development subject to conditions.

County Archaeologist Report Dated 15th February 2024

- Attachment of conditions recommended, including further archaeological testing, a programme of archaeological monitoring, written and photographic recording, post-excavation analysis and the publication of archaeological resolutions.

Public Lighting Department Report Dated 24th January 2024

- Some items for clarification raised but a number of conditions recommended for attachment.

Architects Department Report Dated 15th February 2024

- Comment made in relation to car parking in courtyards, noting it would be preferable to locate parking around the edges of courtyards. Also recommendation that car parking to the rear of Blocks N1 to N4 & M1 be revised to create a buffer strip. A recommendation for refusal was not included.

The above referenced items are in no way fundamental and could be easily resolved by way of condition.

Parks Division Report Dated 15th February 2024

- Comment made in respect of SUDs features located in public open spaces, boundary treatments, play space provision, levels and the delivery of proposed Class 1 Open Space. A recommendation for refusal was not included.

Again, it is our strong view that each of the above concerns could have been addressed through appropriately worded conditions and would in no way necessitate a refusal of permission.

Importantly, an earlier report commenting on the documentation submitted at application stage was supplied by the Parks Department on 1st September 2023. This report raised no concerns in relation to SUDs features within the public open space areas and whilst raising some points in relation to open space quality concludes that **'in the event this information cannot be provided as Additional Information, the following conditions should be applied'** going on to recommend the attachment of the following condition:

'A revised landscape plan including layout, details of boundary treatment and play provision shall be submitted and agreed with the Parks and Green Infrastructure Division prior to the commencement of works on site.

These plans shall include:

- *Details of boundary treatment along Public Open Space and roads and between private residential units / managed areas and Public Open Space.*
- *Pitch development works including levels, drainage proposals and specification in accordance with Performance Quality Standards for pitch development.*
- *A Taking in charge drawing in relation to areas of open space to be agreed with the Parks and Green Infrastructure Division prior to the commencement of works on site.*
- *To ensure the protection of trees and hedgerows to be retained within the site, the developer shall implement all the recommendations pertaining to tree retention as outlined within the submitted tree report by Charles McCorkell dated June 2023*
- *The appointed arboricultural consultant shall be engaged by the applicant for the duration of the project including construction design input of built features, to liaise with works contractor and Fingal County Council's Parks and Landscape Planning Officer and monitor and record (photograph) all tree protection measures (e.g. fencing, cellular system, slab and mini-pile construction etc.).*
- *A tree bond of €30,000 shall be lodged with the Council prior to the commencement of development in order to ensure that the trees are protected and maintained in good condition throughout the course of development. This bond will be held by Fingal County Council for a period of three years post construction which may be extended in the event of possible construction related defects.'*

Contrary to the assertion in Refusal Reason No. 1, the Planning Authority's Parks Department raised no issues regarding public open space that in its view warranted anything close to a refusal of

permission in this matter. Again, it is unclear precisely what basis Refusal Reason No. 1 is predicated upon when it runs contrary to the contents of the Departmental Reports and the Planning Authority's own Case Officer's Report.

On the basis of the above, it is very clear that the recommendations of the various Departments conflict significantly with the ultimate decision and it is very difficult to see how the attached refusal reasons were favoured over the application of appropriate conditions.

Notwithstanding the lack of any substantive basis for Refusal Reason No. 1., Section 4.0 below will provide a response to the Planning Authority's refusal reasons and will refer to the various enclosures outlined earlier in this report. The various responses provided will invite the Board to overturn the decision of Fingal County Council and Grant Permission.

4.0 Grounds of Appeal and Response to Refusal Reasons

This section will discuss the Applicant's grounds of appeal and, for the benefit of the Board, will comprise a direct response to the reasons for refusal issued under Reg. Ref. LRD0006/S3. The Applicant's grounds of appeal and response may be summarised by the following points:

- The scheme is fully consistent with local, national and regional planning policy provisions and guidance. We direct the Board to the various detailed reports submitted at application stage.
- With respect to Refusal Reason No.1 we would highlight to the Board that a total provision of 5.1 hectares of high-quality Class 1 and Class 2 Public Open space is included as part of the proposed development, well in excess of the 3.5 hectare requirement for a development of this scale. The ceding of lands to the Planning Authority to facilitate the completion of the C-Ring/Spine Road was agreed in principle with the Transport Department ahead of submission. The ceding of lands and clarification of the overall phasing arrangements could have been fully satisfied by way of condition. An Alternative Design Option which proposes relatively minor amendments to the proposed open space strategy is also enclosed for the consideration of the Board.
- Regarding Refusal Reason No. 2, the accumulated data demonstrates, beyond any reasonable scientific doubt, that the proposed development is not an *ex-situ* site for qualifying interests of nearby SPAs. The application included sufficient evidence to demonstrate this to the Planning Authority. Nevertheless, in order to fully address the stated concerns of the Planning Authority, an updated NIS has been submitted with this appeal which includes an up to date and comprehensive suite of results from the Wintering Bird Survey undertaken on-site, together with an explanatory response note from the Project Ecologist. Therefore, it is clear that there is no issue with the NIS that was submitted with the application.
- There was no ambiguity in the submitted documents with regards to the Applicant's clear intent to cede part of their lands, **at no cost**, to the Planning Authority to facilitate the completion of the southern portion of the 'C-Ring' Road upon receipt of a grant of permission. This was very clearly stated by the Applicant in the letter submitted with the Further Information Response. Nonetheless, this appeal is accompanied by a full suite of draft legal documents which provide further clarity on this future agreement. However, it should be noted that no such legal pack was requested at any stage within the planning process.

4.1 Refusal Reason No. 1

'The design and layout of the proposed development, particularly in relation to its failure to provide for high quality public open spaces; the unresolved nature of the southern alignment and layout of the C-Ring/Spine Road and achievement of wider connectivity opportunities and given the deficiencies in the establishment of appropriate phasing arrangements, would result in a substandard residential development providing a poor-quality environment for future residents; which would be deficient in the timely delivery of necessary and supporting infrastructure, and would fail to contribute to the achievement of enhanced connectivity and sustainable travel opportunities to serve northwest Balbriggan. The development would

therefore seriously injure the amenities of future residents of the scheme and would seriously injure the amenities of property in the vicinity of the site. The development would therefore be contrary to the proper planning and sustainable development of the area.'

4.1.1 Applicant's Response

The above refusal reason will be broken down into key items and addressed accordingly.

Public Open Space and Landscaping

The opening section of Refusal Reason No. 1 above refers to the schemes suggested '*failure to provide high quality open spaces.*' This assertion, however, bears no relation to the detail of the proposal and is directly contradicted by the Planning Authority's own Parks Department Report and Case Officer's Report. The revised scheme as submitted at Further Information Stage under Reg. Ref. LRD0006/S3 included a total provision of over **5.1 hectares** of high-quality Class 1 and Class 2 Public Open Space, a substantial provision, well in excess of the minimum requirement of 3.5 hectares as per the standards set out in the Fingal Development Plan 2023-2029.

In addition to this, all public open spaces included in the Further Information layout were appropriately overlooked, easily accessible and well-connected through a hierarchy of streets and a pedestrian friendly network. The make-up and layout of the public open spaces submitted at Further Information Stage were fully consistent with the relevant requirements of the Development Plan. This compliance is clearly set out in extensive detail in the Further Information Response Submission. As noted in the Internal Report prepared by the Parks Department dated 1st September 2023, we are of the view that the primary concerns noted were addressed, and in any case the Parks Department clearly specify **that conditions could have been applied.**

The second report supplied by the Parks Department dated 15th February 2024, which relates to the Further Information submission, includes generalised further comments on the revised layout, but at no stage is a recommendation of refusal made. Notwithstanding this upon review of the further comments, the items raised relate to SUDs features located in public open spaces, boundary treatments, play space provision and levels, and we are fully satisfied that each of these concerns could have been resolved by the Parks Department through the attachment of appropriate conditions.

To assist the Board in their review of this appeal and of course to provide the Planning Authority with further comfort, we have duly reviewed each of the items raised and attach Alternative Design Option drawings in Appendix C and D of this report which responds directly to same. A summary of the revisions is provided hereunder:

Parks Department Further Comments on POS1 and POS2

The Parks Department as part of their review of the Further Information submission, considered that POS1 was dominated by SUDs and did not appear to be designed as an amenity space for residents.

Response – Alternative Design Option

It is important, primarily, to highlight that of all the public open space areas provided on site (11 no. Class 2 POS areas and 1 no. Class 1 POS area) only 4 no. of these include any SUDs features. These four areas equate to far less than 10% of the overall public open space provision for the entire development. Nonetheless, to improve the public open space provision in the north-eastern portion of the site, an Alternative Design Option has been prepared which includes the removal of a bank of 13 no. terraced and semi-detached house units at this location, to allow for the linking of POS area 1 and 2, creating one larger open area of 3,900sq.m. A 400sq.m play area has also been added, together with additional seating and bicycle parking. Boundary treatments have also been applied around this enlarged POS area. For full details please consult the IS Design Landscape Documents attached in Appendix D.



Figure 8.0 Landscape Sheet 1 of 8 as prepared by IS Design as part of the Alternative Design Option

Parks Department Further Comments POS3

With respect to POS3, the Parks Department considered that for this area to be a useable and safe recreation space an element of play and a boundary treatment area was required.

Response – Alternative Design Option

As part of the Alternative Design Option put forward in this appeal for the Board's consideration, a 100sq.m play area has been added to POS3. Appropriate boundary treatments have also been identified and are indicated on Drawing No. MAL-019020-P17, an extract from which is included below:

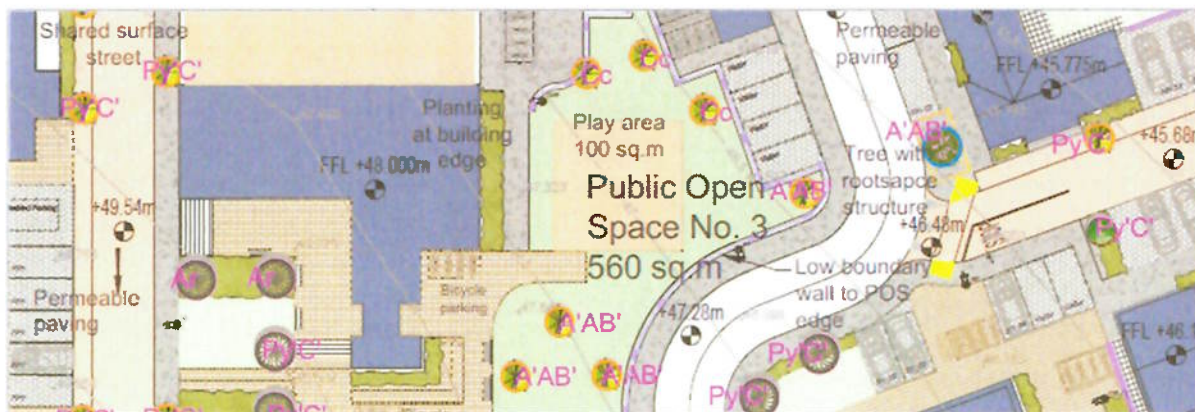


Figure 9.0 Landscape Sheet 1 of 8 as prepared by IS Design as part of the Alternative Design Option

Parks Department Further Comments POS4

Comments raised in respect of POS4 included the requirement of a kick-about space, play equipment for children and teenagers, alternative planting, boundary treatments and the provision of cross sections.

Response – Alternative Design Option

As detailed on Drawing No. MAL-019-20-P24 attached in Appendix D, a 51 x 34m kick about/dog park area have been included together with the provision of revised boundary treatment details. Outdoor gym equipment has been provided and the specification of trees in this area has been increased.

Additional bicycle parking and cross sections have also been supplied. Please consult the IS Design Landscape Documents enclosed in Appendix D for full clarity.

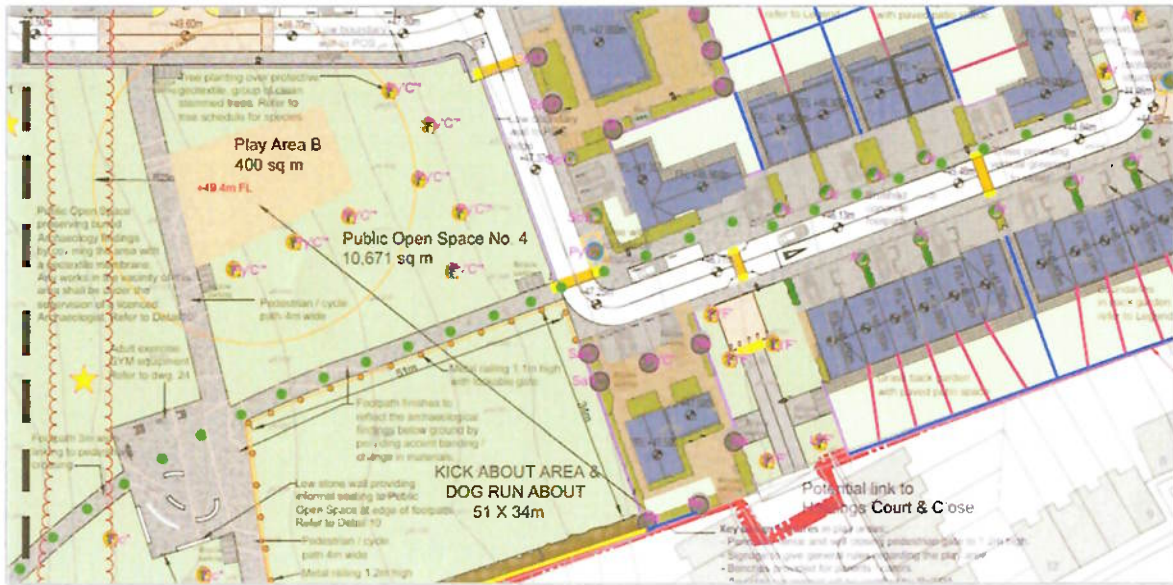


Figure 10.0 Landscape Sheet 1 of 8 as prepared by IS Design as part of the Alternative Design Option
Parks Department Further Comments POS5

The Parks Department noted that a separation distance of 25 metres would be required between dwellings and proposed play provision and requested further clarity in respect of the proposed retaining wall.

Response – Alternative Design Option

As demonstrated in the attached Drawing No. MAL-019-20-P02 a 25-metre radius has been indicated around the proposed play area, illustrating compliance with this separation distance requirement. In addition, the proposed retaining wall is illustrated in the attached Drawing No. MAL-019-20-P19 for the attention of An Bord Pleanála and Fingal County Council.



Figure 11.0 Landscape Sheet 2 of 8 as prepared by IS Design as part of the Alternative Design Option

Parks Department Further Comments POS6

Concerns raised in relation to POS6 included the presence of SUDs and the useability of the pedestrian path through the detention basin.

Response – Alternative Design Option

In response to the above, we note that the footpath design at this location has been amended so that it is now on mounded/made up ground to levels that are similar to the adjacent street/road which will omit the possibility of making the footpath unusable. This is illustrated in the attached Drawing No. MAL-019-20-P21, an extract from which is included overleaf.

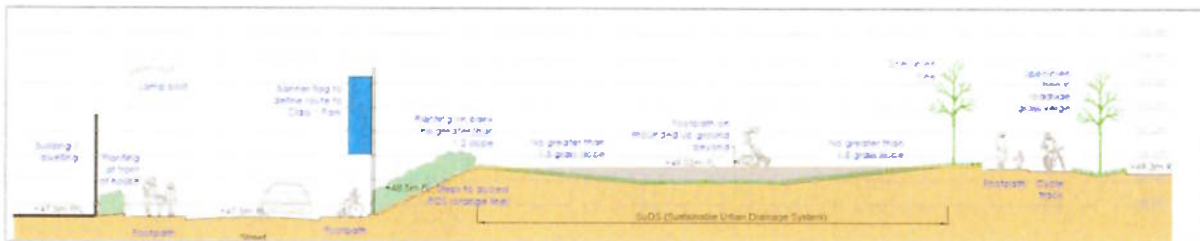


Figure 12.0 Landscape Sheet 2 of 8 as prepared by IS Design as part of the Alternative Design Option.

Parks Department Further Comments POS7

It was considered by the Parks Department that this open space area required further thought, and clarity was required on whether the path located along the eastern side of this open space area is public or private.

Response – Alternative Design Option

On the basis of the above commentary, the design of POS7 has been reconsidered and amended to ensure that the footpath to the east is for private resident use. Please consult Drawing No. MAL-019-20-P04 for further details.

Parks Department Further Comments POS9, 8 and 10

The Parks Department were unclear why the open space areas referenced above were subdivided. Clarity was also sought in respect of the proposed levels.

Response – Alternative Design Option

By way of response, as part of the Alternative Design Option the proposed POS areas 8, 9 and 10 have been amalgamated and renamed as POS8. The levels for this area have also been reviewed and the northern most area of this POS as been amended to provide more feasible/useable space. Please refer to the sections included in Drawing No. MAL-019-20-P22.



Figure 13.0 Landscape Sheet 6 of 8 as prepared by IS Design as part of the Alternative Design Option.

Parks Department Comments in Relation to Shared Surfaces

With respect to the revised Shared Surface design submitted as part of the Further Information Response under Reg. Ref. LRD0006/S3, the Parks Department noted that 'the locations of the required constructed tree pits of a minimum of 12 cubic metres and planting pits, services/service corridor need to be fully thought out at design stage.'

Response

In response to the above, we confirm that there are a total of 13 no. proposed tree pits of a minimum 12 cubic metres that are proposed in public lands as per Detail 8 on drawing MAL-019-20-P12. The pipe infrastructure of both water mains and foul and storm are located in the roads / streets of the proposed development so will not clash with the tree pits. The locations of each of these 13 no. tree pits are in areas where there is excess public space such as the end of streets or at junctions to streets. The positions of these tree pits has been designed so that there is a suitable service corridor on one side of the proposed road / street giving ample room for other utilities such as electricity, eircom etc.

Parks Department Comments in Relation to Play Provision

Included also as part of the Parks Department Further Comments document dated 15th February 2024 was a suggestion that the Applicant had not met the Development Plan standards with respect to play provision.

Response

As detailed in the response report prepared by IS Design as part of this appeal, Fingal County Council's Play Policy has again been reviewed in advance of submission, and following this review it is our strong contention that the revised play areas featuring as part of the Alternative Design Option drawings, fully comply with the terms set out in the requisite policies. With respect to the 25 metres separation distance, we would highlight that this has been fully met in all but three instances, two of which just fall marginally shy of this requirement. Please consult Drawing Nos. MAL-019-20-P16, MAL-019-20-P17 and MAL-019-20-P24 as included within Appendix D for full details on proposed play areas and play equipment.

Parks Department Comments in Relation to Class 1 Open Space provision in Northwest Balbriggan

In relation to the above, it was considered by the Parks Department that the area of Class 1 Public Open space attributed to each planning permission was not clearly shown on the map submitted at Further Information Stage.

Response – Alternative Design Option

As was clearly set out as part of the Further Information submission submitted in respect of LRD0006/S3, the Class 1 Public Park included within the current red line boundary (LRD0006/S3) is provided solely to satisfy the Public Open Space requirements of this proposed scheme, and has not been committed in respect of the Public Open Space requirements (or indeed at all) to any other proposed or permitted development elsewhere at any point. There is a long-running history of planning applications both on the subject lands and in the immediate surrounding area and Class 1 public open space has been delivered elsewhere, outside of the current red line boundary, to serve these permitted schemes. The Applicant offered in excess of 1 hectare of Public Open Space on the phase 1 section as it was considered that this was sufficient to cover all requirements. This is why the remainder was submitted as part of phase 2. However, in order to satisfy the Council, the entire Class 1 Public Open Space is included as part of Phase 1.

To provide further clarity on this item, we enclose with this appeal a colour coded drawing which clarifies the location of existing committed public open space, proposed public open space and a future public open space provision area. Please refer to Drawing No. MAL-019-20-P25, as included in Appendix D, an extract from which is included overleaf:

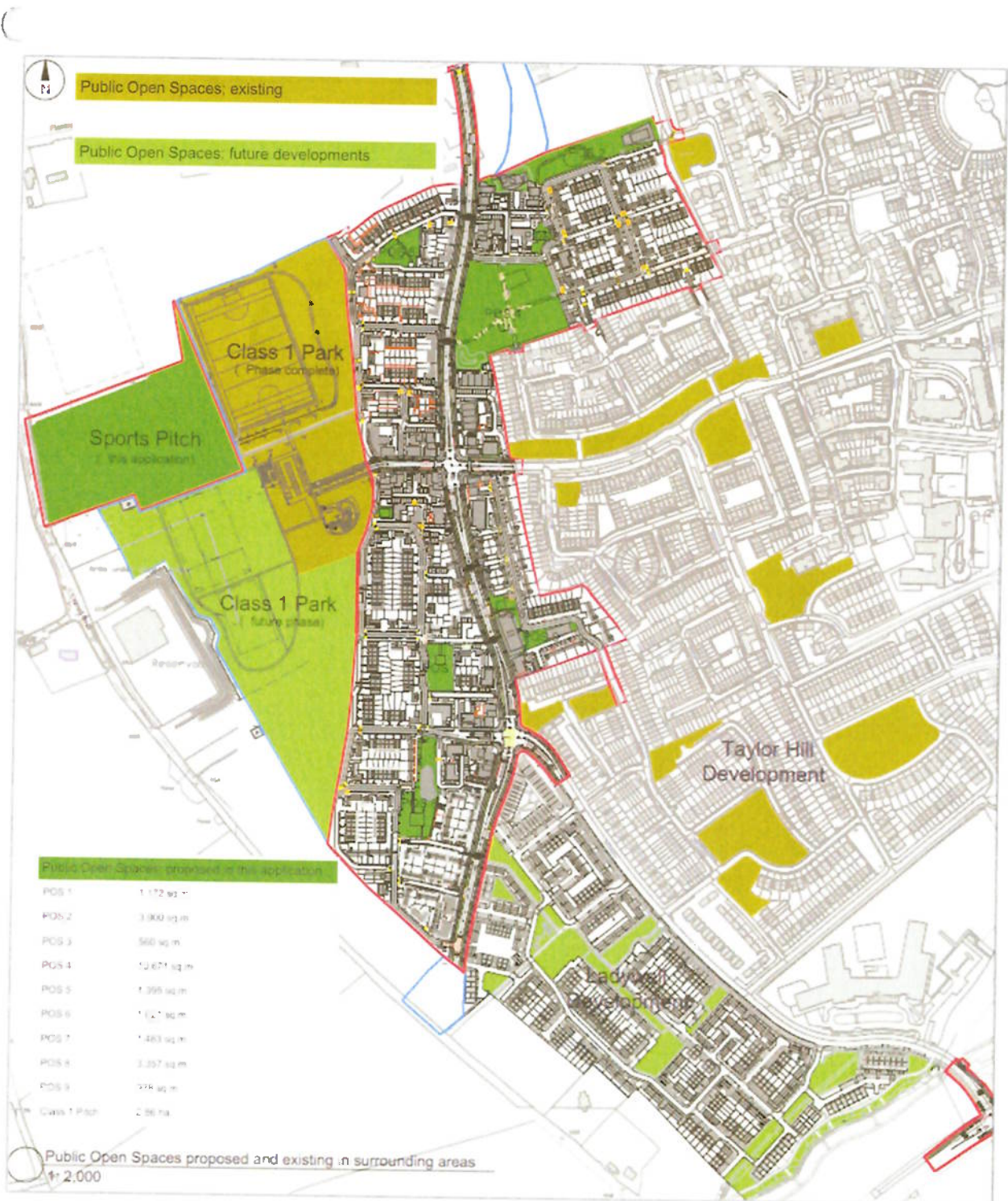


Figure 14.0 Extract from Drawing No. MAL-019-20-P25 showing open space areas proposed and existing in surrounding areas.

Summary

As is clear from the above, cumulative changes have been made in the design to address the further comments made by the Planning Authority’s Parks Department. It is the Applicant’s submission that it has been clearly demonstrated that these further comments were entirely capable of being addressed by way of condition. We also note that the changes suggested above as part of the Alternative Design Option, can be implemented in full by the Board if deemed necessary, by way of condition.

Phasing Arrangements

The second aspect of Refusal Reason No. 1 overlaps somewhat with Refusal Reason No. 3 in that it references the suggested *'unresolved nature of the southern alignment and layout of the C-Ring/Spine Road'*. A robust response to this commentary is included in Section 4.3.1 of this report and we would direct the Planning Authority and An Bord Pleanála to same.

It is also suggested in Refusal Reason No. 1 that *'deficiencies in the establishment of appropriate phasing arrangements, would result in a substandard residential development...'*

Response

The above commentary is regrettably inaccurate and in any case the phasing arrangements pertaining to the subject development could have sufficiently been addressed by the Planning Authority by way of condition. It is the Applicant's submission that this should not have constituted grounds for a refusal of permission.

As was clarified by way of the Applicant's Further Information Submission, a commitment was made regarding the delivery of the full extent of the link road which was located within the red line boundary, and the proposed junction upgrades at the Boulevard Road/Naul Road junction to the south, as part of the first phase of development (Phase 1). This represents an immediate, significant, and frontloaded investment by the Applicant in infrastructure designed to serve the proposed development and the wider surrounding area.

Phase 1 of the proposed development as outlined at Further Information Stage, in addition to including the delivery of the link road and the junction upgrades to the Boulevard Road/Naul Road junction, also included the construction of 196 no. residential units within the Hampton Central and Tanners Lane Character Areas. There are three Class 2 Public Open Space areas to also be delivered in Phase 1, inclusive of Public Open Space Area Nos. 6, 7 and 11, which together comprise a cumulative area of 4,042sq.m, which is, the Applicant respectfully submits, more than sufficient space to serve the 196 no. residential units, in advance of the delivery of the Class 1 Public Park on-site.

In addition to the above it is prudent at this juncture to emphasise that the Applicant has already delivered a substantial section of Class 1 Open Space within the north-west Balbriggan landbank (located to the immediate west of the subject lands and to the east of the proposed Class 1 Park under Reg. Ref. LRD 0006/S3). The Applicant originally offered in excess of 1 hectare of Public Open Space in Phase 1 and it was considered that this would be sufficient. The Class 1 Park, was completed in November 2021, following significant investment by our client, and one year was recommended by the Planning Authority to let the park and pitch grow. The Applicant is now actively engaging with the Planning Authority in relation to the Taking-in-Charge process and it is understood that the completed Park will be fully Taken-in-Charge in the coming months. This is documented in Table 2 of this appeal above.

We maintain our position that the recent delivery of Class 1 Public Open space in the area by our client and the proposed frontloading of road infrastructure proposed in Phase 1 of the proposed development at Further Information Stage represents a significant and independent investment in the area and as a result of this provision, it is reasonable to conclude the construction of the 196 no. units proposed as part of Phase 1 and the surrounding area will be very well serviced pending the delivery of the Class 1 Park (LRD 0006/S3) in Phase 2.

Notwithstanding the above submission, and the clear surfeit of Public Open Space available to Phase 1 of the proposed development, as part of the Alternative Design Option put forward to the Board, the Applicant has instructed the Design Team to provide a revised phasing strategy which now also includes the proposed Class 1 Public Open Space as part of Phase 1. This is therefore demonstrated in the enclosed Architectural Drawing as prepared by Tégos Architects and enclosed in Appendix C of this report. In any event we suggest that the most appropriate means of formalising the phasing arrangements would be through the attachment of a suitably worded condition. We thus respectfully request An Bord Pleanála to have due consideration to this option.

is our submission that the above responses satisfy and fully resolve the concerns highlighted in Refusal Reason No. 1.

4.2.1 Refusal Reason No. 2

'Insufficient information is available to the Planning Authority to enable it as the competent authority to determine whether the proposed development individually, or in combination, with other plans or projects would not adversely affect the integrity of nearby European Sites or their qualifying interests. Accordingly, the planning authority cannot conclude beyond reasonable doubt that the development would not impact Natura 2000 sites in the vicinity or have a detrimental impact on their qualifying interests. The Planning Authority is therefore precluded from granting permission for the proposed development.'

4.2.1 Applicant's Response

Refusal Reason No. 2 appears to have derived from an external review of the submitted Further Information Documents by SLR Consulting, with the Planning Authority concluding that it was not satisfied that *'sufficient scientific evidence had been provided to demonstrate that the development site is not an ex-situ feeding area or significant importance by any Qualifying Interests'* and that further information regarding SCI bird species would be required *'to remove any scientific doubt from this determination and enable such effects to be excluded.'*

Prior to detailing our response, it is firstly submitted that a full set of wintering bird surveys do not alter the lack of importance of the site to qualifying interests of the nearby SPA that was outlined in the AA and NIS submission made at Application Stage. Nevertheless, in order to fully address the concerns of the Planning Authority in this regard additional wintering bird surveys were instructed by the Project Ecologist over the months of December 2023 and January 2024. The suite of results for this complete wintering bird survey are included in the updated and attached NIS document prepared by Altemar Ltd. The results of the additional surveys yielded similar results to those undertaken earlier in the season, in that no significant numbers of wintering birds from neighbouring Natura 2000 sites have been noted on site.

In support of this appeal, a brief response letter has also been prepared by Altemar Ltd. which provides a direct response to the commentary provided by the Planning Authority relating to this refusal. This letter concludes as follows:

'As can be seen from the survey data and updated AA Screening/NIS the site is clearly not an ex-situ site for qualifying interests of nearby SPA's. The argument to refuse the proposed development on the grounds of importance to nearby SPA's is fundamentally flawed. The habitats on site are not of importance to the qualifying interests of nearby SPA's. It is also important to note that the only qualifying interests of the nearby SPA's observed on site are herring gull, where a maximum of 20 birds were observed. Clearly, there is sufficient evidence to show the lack of importance of this site to qualifying interests of nearby SPA's and basing a refusal on the grounds of having 20 herring gulls on site on one occasion would effectively set a precedence and sterilise nearly every development site in coastal areas of the east coast of Ireland including urban areas, where it is clear that such data shows that there would be no adverse effects on the integrity of Natura 2000 sites.'

Whilst a new NIS, including wintering birds' data from December 2023 and January 2024, has been submitted with this appeal, the Board will also note the assessment by the High Court of the adequacy of a wintering birds survey that was carried out on only two dates (31 August 2018 and 2 March 2020) in *Monkstown Residents Association v. An Bord Pleanála* [2022] IEHC 318. Holland J. refused to quash the permission at issue in those proceedings as having been based on inadequate data pertaining to wintering birds, notwithstanding that the survey itself had never been presented to the Board, and that it had only been carried out on two dates, in the following terms:

"...the call for information can be never-ending and is not an end in itself. The nature and detail of the information required to render the conclusions comprehensible, interrogable and

comparable to other evidence will inevitably vary with the expert discipline in question, the question the expert is addressing and the conclusion the expert draws...

The Ecological Impact Statement refers to its methodological approach. On the specific issue of “data”, there was “data” before the Board by way of identification of listed species of wintering and breeding birds found on site on two particular dates. Whether that information sufficed for the purpose of the EIA Screening decision the Board had to make was a matter for the expert Board. Whether, on the contrary, that data was insufficient for that purpose for any of the reasons ventilated by objectors – for example as to the Brent Goose – was equally a matter for the expert Board. Whether that data was insufficient for that purpose for any of the reasons ventilated by Dr O’Connor in these proceedings should and would have been a matter for the Board had those reasons been ventilated before the Board.

*This seems to me to be an issue on which the Board is to be judged on the information which was before it when it made the impugned decision. That is perhaps all the more so where the MMRA did object by reference to the Bird Survey but did not do so, as it might have done, in the terms now advanced by Dr O’Connor. Judicial review is not, at least generally, a second chance to raise issues which could have been raised before the Board. **The Applicants now ask me to quash the Impugned Decision on the basis that the Board failed to decide a controversy on the basis of evidence not before it before it. That I respectfully decline to do.*** (Emphasis added)

It is our view that the Planning Authority had more than sufficient data before it to make a determination regarding the importance, or lack thereof, of the site as an ex-situ location for wintering birds – certainly in comparison to the lesser data deemed to be adequate by the High Court in *Monkstown Residents Association*. That data showed, beyond any reasonable scientific doubt, that the proposed development would have no significant impact on any protected sites or their qualifying interests. The Applicant has now supplemented that comprehensive data with updated surveys from December and January. We refer the Board to the relevant enclosure in Appendix E of this report as prepared by Altemar Ltd. and trust that sufficient information has been supplied to allow the Board to make a fully informed determination on this issue.

4.3 Refusal Reason No. 3

‘The proposed development, having regard to the lack of clarity in relation to the transfer of lands to the south of the site which would assist in the timely delivery of transportation schemes and provision of enhanced connectivity and sustainable travel opportunities to serve northwest Balbriggan, would contravene materially Objective CMO41 of the Fingal Development Plan 2023-2029 which sets out the Council’s proposals for the development of the County’s transportation network. The development as proposed would therefore be contrary to the proper planning and sustainable development of the area.’

4.3.1 Applicant’s Response

For full clarity we must re-emphasise that the above refusal reason raises no objection to the alignment of the road infrastructure proposed on-site and furthermore, the Planning Authority’s Transport Department did not recommend a refusal of permission on the basis of the commitment made by the applicant to transfer lands, at no cost, to the Planning Authority to facilitate the full completion of the ‘C-Ring’ road. The letter signed by the Applicant and submitted at Further Information Stage, made their intentions very clear, we quote an extract from same below in this regard:

‘We confirm that the lands outlined in blue on the above map extract will be ceded to Fingal County Council, at no cost, should a grant of permission be forthcoming under Reg. Ref. LRD0006/S3 in order to enable the future connection of the Link Road/C-Ring Road to Clonard Road to the west and onwards to the Naul Roundabout’

As confirmed in Section 1.2 of this report, the Applicant Group have transferred a substantial amount of land to Fingal County Council over the past years to facilitate the delivery of critical infrastructure for the wider public good, and clearly, have a strong track record of fulfilling their commitments in relation

to same. Despite this however, the Case Planner in their assessment Report dated 22nd February 2024, suggests that the further information response as quoted above:

'continues to give rise to an element of doubt as to the manner in which this issue is to be resolved'

it is also stated further on that:

'the lands held by the applicant to the south of the site of the Spine Road/C-Ring Road, notwithstanding the intent to transfer same to the local authority, are not within the red line boundary of the application site but remain within the blue line boundary/wider area. The enforceability of any agreement to transfer such lands, given they are outside of the planning application boundary, is therefore called into doubt.'

We are perplexed and confused by the above commentary and the associated refusal reason that ensued, primarily for the following reasons:

- The Applicant has a long history of transferring lands to Fingal County Council, without issue, as evidenced in Table 2 of this appeal;
- Clear provisions were made by the Applicant at Further Information Stage in the form of a signed letter, an appropriate mechanism to demonstrate the Applicant's intent. It is worth noting that the Applicant has previously provided a similar letter, in relation to other planning applications and they were always deemed sufficient;
- At Further Information Stage, the Applicant offered to include the construction of the C-ring Road in its entirety, as part of Phase 1 and not as part of a later phase as originally submitted;
- In any event this matter, and any associated doubt, could have been addressed by way of condition as per the following extract from the Planning and Development Act 2000 (as amended).

34. (1) *Where-*

- (a) *an application is made to a planning authority in accordance with permission regulations for permission for the development of land, and*
- (b) *all requirements of the regulations are complied with, the authority may decide to grant the permission subject to or without conditions, or to refuse it.*

(4) *Conditions under subsection (1) may, without prejudice to the generality of that subsection, include all or any of the following –*

- (a) *conditions or regulating the development or use of any land which adjoins, abuts or is adjacent to the land to be developed and which is under the control of the applicant, so far as appears to the planning authority to be expedient for the purposes of or in connection with the development authorised by the permission;*

The provisions of section 34(4) confirm that a condition could have been attached to the subject application which regulated the use of the lands proposed to be ceded, yet the Planning Authority failed to avail of this legislative provision. This highlights the critical flaw of Refusal Reason No. 3 and we trust that the Board will see fit to attach a condition to above effect to ensure that this transfer agreement is fully formalised following receipt of a grant of permission.

As a final observation, we also note the Planning Authority's reference to Objective CMO41 of the Fingal Development Plan 2023 which states the following:

Objective CMO41 – Transportation Schemes

Seek to implement the transportation schemes indicated in Table 6.3

The Balbriggan Ring Road is included as part of the above referenced Table 6.3. We consider that the suggestion of the Planning Authority in Refusal Reason No. 3 that the lack of clarity in relation

the transfer of land would materially contravene this objective is disconcerting. With respect, the assertion is Refusal Reason No. 3 is demonstrably untrue. In fact, the proposed development and transport infrastructure was the swiftest and surest way to implement Objective CMO41. The decision to refuse permission in fact inhibits the fulfilment of the Objective. The Applicant clarified by way of the Further Information Response that they would commit to frontloading this infrastructure on-site as part of Phase 1 of the development programme, which would see the transport infrastructure being delivered on-site in short order. In the absence of a grant of permission the delivery of this road and in turn the realisation of this long-standing development plan objective is currently impossible.

To provide additional comfort to the Board on this item, the Applicant has instructed their legal advisers, LK Shields, to prepare suite of draft legal documents, including a deed of conveyance, to accompany this appeal, including:

- A Legal Transfer Deed;
- A Draft Family Law Declaration; and
- A Draft Section 72 Declaration.

Each of the above documents are enclosed in Appendix F for the consideration of the Board.

We trust that the above response and the referenced enclosures fully clarify and address Refusal Reason No. 3.

5.0 Conclusion

This First Party Appeal is prepared on foot of a decision by Fingal County Council to refuse permission under Reg. Reg. LRD0006/S3 for a proposed Large-Scale Residential Development, comprising **564 no. high-quality dwellings, 3 no. childcare facilities, 9 no. commercial units, 6 no. communal units, in excess of 5 hectares of Class 1 and 2 Open Space**, and the continuation of the **Flemington Link Road** (formerly known as 'C Ring' Road), a piece of critical infrastructure required to realise the potential of residentially zoned lands in northwest Balbriggan, and a long-standing objective of the Fingal Development Plan.

It is regrettable that Fingal County Council opted to issue a refusal in respect of this proposal, particularly given that the 3 no. refusal reasons, we feel could have been easily addressed by way of condition. The negative determination is particularly disappointing considering that no fundamental or material objections were raised by Fingal County Council's Internal Departments in their assessment of this case.

To clarify to the Board, the proposal is fully consistent with the relevant national and local policy provisions and the more detailed standards included in the Fingal Development Plan 2023-2029. The suitability of the site and overall layout, similarly, has already been established by virtue of the extant permission pertaining to the site, which has been considerably improved upon in this proposal. The Applicant has chosen to improve on the extant permission, at their own time and cost, in order to achieve a better design for the Balbriggan area. It must be recognised that the proposal comprises a substantial amount of physical, social and community infrastructure that will support the continued sustainable growth of Balbriggan.

The proposed development is in accordance with the proper planning and sustainable development of the area and as such, we respectfully request that planning permission be **granted** in this instance.

Appendix A Copy of Fingal County Council Notification of Decision to Refuse Permission, dated 22nd February 2024.



MR Kevin Hughes,
Hughes Planning and Development Consultants
85 Merrion Square
Dublin 2
D02 FX60

**DECISION TO REFUSE PERMISSION
PLANNING & DEVELOPMENT ACT 2000, AS AMENDED**

Decision Order No PF/0536/24	Decision Date 22 February, 2024
Register Ref. LRD0006/S3 LGMA Ref.	Registered 20 December, 2023

Area Balbriggan

Applicant Dean Swift Property Holdings Unlimited Company

Development Dean Swift Property Holdings Unlimited Company, intend to apply for a ten-year planning permission for a Large Scale Residential Development (LRD) on lands located off Flemington Lane, Balbriggan, Co. Dublin. The application site comprises an area of 22.62 ha, and is located to the south of Flemington Lane, to the east of Clonard Road (also known as Bridgefoot Road) (L1130 Local Road), to the west of Hamlet Lane and to the north and west of the Taylor Hill residential development. The subject site also includes a section of the existing Boulevard Road (also known as Taylor Hill Boulevard) and a section of the junction between Boulevard Road (also known as Taylor Hill Boulevard) and Naul Road (R122 Regional Road) to the south.

The proposed development will consist of:

(i) The demolition of an existing single storey dwelling (151sq.m) (Eircode K32 KR40), associated single-storey storage shed (14.9sq.m), and larger single-storey agricultural shed outbuilding (366sq.m), all of which are located to the south of Flemington Lane.

(ii) The construction of 564 no. dwelling units, consisting of 378

no. houses ranging in height from two to three storeys (127 no. terraced two-bedroom houses; 5 no. three-bedroom detached houses; 156 no. three-bedroom semi-detached houses; 76 no. three-bedroom terraced houses; and 14 no. four-bedroom detached houses); 28 no. duplex blocks, ranging in height from two to three storeys, comprising 84 no. duplex units (22 no. one-bedroom duplexes, 36 no. two-bedroom duplexes and 26 no. three-bedroom duplexes) and 10 no. apartment blocks (FM1, FM2, M1, M2, FP1, HN1, HC1, HC2, HC3, and HS1) ranging in height from three to five storeys, comprising 102 no. apartments (35 no. one-bedroom apartments and 67 no. two-bedroom apartments). The proposed development is set out into 5 no. key Character Areas as follows; Hampton Park South (southern-most portion of the site), Hampton Park Central (central-western portion of the site), Tanners Lane (central-eastern portion of the site), Hampton Park North (north-western portion of the site) and Flemington Park (north-eastern portion of the site). The number and mix of units comprised within each of these Character Areas is detailed as follows:

(a) Hampton Park South Character Area - containing a total of 103 no. dwelling units, consisting of 71 no. houses, all of which are two storeys in height (46 no. three-bedroom semi-detached houses, 1 no. three-bedroom detached house, 8 no. three-bedroom terraced houses, and 16 no. two-bedroom terraced houses); 5 no. duplex blocks, ranging in height from two to three storeys, consisting of (5 no. one-bedroom duplexes; 9 no. two-bedroom duplexes and 4 no. three-bedroom duplex) and 1 no. apartment block (HS1) which is four storeys in height and consist of 14 no. apartments (6 no. one-bedroom units; 8 no. two-bedroom units).

(b) Hampton Park Central Character Area - containing a total of 142 no. dwelling units, consisting of 88 no. houses ranging in height from two to three storeys (26 no. three-bedroom semi-detached houses; 22 no. three-bedroom terraced houses, 4 no. three-bedroom detached houses and 36 no. two-bedroom terraced houses) 7 no. duplex blocks all of which are three storeys in height, consisting of 18 no. duplex units (2 no. one-bedroom

duplexes, 9 no. two-bedroom duplexes and 7 no. three-bedroom duplexes) and 3 no. apartment blocks (HC1, HC2 and HC3) ranging in height from three to five storeys, consisting of 36 no. apartments (17 no. one-bedroom units and 19 no. two-bedroom units). The Hampton Park Central Character Area also comprises 1 no. two storey childcare facility with an area of 354sq.m.

(c) Tanner's Lane Character Area - containing a total of 54 no. dwelling units, consisting of 36 no. houses all of which are two storeys in height (26 no. three-bedroom semi-detached houses; 4 no. three-bedroom terraced houses and 6 no. two-bedroom terraced houses), 3 no. duplex blocks, all of which are three storeys in height, consisting of 12 no. duplex units (1 no. one-bedroom duplex, 6 no. two-bedroom duplexes and 5 no. three-bedroom duplexes) and 1 no. apartment block (M2) which is three storeys in height, consisting of 6 no. apartments (6 no. two-bedroom units).

(d) Hampton Park North Character Area - containing a total of 128 no. dwelling units, consisting of 84 no. houses ranging in height from two to three storeys (28 no. two-bedroom terraced houses; 38 no. three-bedroom semi-detached houses and 18 no. three-bedroom terraced houses), 8 no. duplex blocks ranging in height from two to three storeys, consisting of 24 no. duplex units (7 no. one-bedroom duplexes; 9 no. two-bedroom duplexes and 8 no. three-bedroom duplexes) and 2 no. apartment blocks (HN1 and M1) ranging in height from three to four storeys, consisting of 20 no. apartments (6 no. one-bedroom units and 14 no. two-bedroom units). The Hampton Park North Character Area also comprises 1 no. two storey childcare facility with an area of 494.6sq.m.

(e) Flemington Park Character Area - containing a total of 137 no. dwelling units, consisting of 99 no. houses all of which are two storeys in height (41 no. two-bedroom terraced houses; 20 no. three-bedroom semi-detached houses, 24 no. three-bedroom terraced houses and 14 no. four-bedroom detached houses); 5 no. duplex blocks ranging in height from two to three storeys, consisting of 12 no. duplex units (7 no. one-bedroom duplexes, 3 no. two-bedroom duplexes

and 2 no. three-bedroom duplexes) and 3 no. apartment blocks (FM1, FM2 and FP1) ranging in height from three to four storeys, consisting of 26 no.

apartments (6 no. one-bedroom units and 20 no. two-bedroom units). The Flemington Park Character Area also comprises 1 no. two storey childcare facility with an area of 379 sq.m.

All ground floor apartments have access to private terraces; all upper-level apartments have access to private balconies, and all houses have access to private rear gardens.

The proposed development also includes:

(iii) the construction of 9 no. commercial units (totalling 593.2 sq.m.) and 6 No. communal units (totalling 315.1 sqm) all of which are located at the ground floor levels of apartment blocks HS1, HC1, HC2, HC3, HN1 and FP1).

(iv) the construction of 2 no. primary vehicular/pedestrian entrances, one from the southeast (upgrade of existing access from Boulevard Road (also known as Taylor Hill Boulevard)) and one from the north (off Flemington Lane), the construction of a secondary access route from the east (access from Hamlet Lane), the construction of 5 no. tertiary access routes (access from Flemington Park, Hastings Avenue, Hastings Drive, Hastings Lawn and Taylor Hill Grange) and the construction of a new main spine road through the site.

(v) the provision of Class 1 Public Open Space in the form of a playing pitch (c. 2.86ha) located to the east of Clonard Road (also known as Bridgefoot Road) (L1130 Local Road), within the western extent of the subject site, this public park is immediately west of an existing playing field which was approved under a separate application. A number of smaller Class 2 Public Open Space areas and communal open space areas to are also proposed throughout the site.

(vi) a total of 927 no. car parking spaces are proposed, this includes 806 no. resident parking spaces, 94 no. visitor spaces, 11 no. disabled parking spaces (numbers include 162 no. EV points), 7 no. spaces allocated to creche parking and 9 set down spaces. A total of 2, 014 no. bicycle spaces are proposed, this includes 1, 326

no. resident bicycle spaces, 640 no. visitor spaces and 48 no. spaces allocated to creche bicycle parking. Planning permission is also sought for landscaping and infrastructural works, foul and surface water drainage, bin storage, 2 no. ESB substations, open space areas including playgrounds, boundary treatments, internal roads, footpaths and cycle paths and all associated site works to facilitate the development. An Environmental Impact Assessment Report (EIAR, formerly known as an EIS) accompanies the application. The application and EIAR may also be inspected online at the following website set up by the applicant: flemingtonlaneLRD.ie

AI Received 20/12/2023

Location Lands off Flemington Lane, Balbriggan, Co. Dublin

Submitted Floor Area Sq Metres

Time extension(s) up to and including 13 March, 2024

Additional Information Requested / Received 11-Oct-2023 / 20-Dec-2023

In pursuance of its functions under the above mentioned Acts, as Planning Authority, the County Council for the County of Fingal did by Order dated as above make a decision to **REFUSE PERMISSION** in respect of the above proposal.

Subject to the (3) reason(s) on the attached Pages.

Reasons

1. The design and layout of the proposed development, particularly in relation to its failure to provide for high quality public open spaces; the unresolved nature of the southern alignment and layout of the C-Ring/Spine Road and achievement of wider connectivity opportunities and given the deficiencies in the establishment of appropriate phasing arrangements, would result in a substandard residential development providing a poor-quality environment for future residents; which would be deficient in the timely delivery of necessary and supporting

infrastructure, and would fail to contribute to the achievement of enhanced connectivity and sustainable travel opportunities to serve northwest Balbriggan. The development would therefore seriously injure the amenities of future residents of the scheme and would seriously injure the amenities of property in the vicinity of the site. The development would therefore be contrary to the proper planning and sustainable development of the area.

2. Insufficient information is available to the Planning Authority to enable it as the competent authority to determine whether the proposed development individually, or in combination, with other plans or projects would not adversely affect the integrity of nearby European Sites or their qualifying interests. Accordingly, the planning authority cannot conclude beyond reasonable doubt that the development would not impact Natura 2000 sites in the vicinity or have a detrimental impact on their qualifying interests. The Planning Authority is therefore precluded from granting permission for the proposed development.
3. The proposed development, having regard to the lack of clarity in relation to the transfer of lands to the south of the site which would assist in the timely delivery of transportation schemes and provision of enhanced connectivity and sustainable travel opportunities to serve northwest Balbriggan, would contravene materially Objective CMO41 of the Fingal Development Plan 2023-2029 which sets out the Council's proposals for the development of the County's transportation network. The development as proposed would therefore be contrary to the proper planning and sustainable development of the area.

Signed on behalf of the Fingal County Council


for Senior Executive Officer

26 February, 2024

NOTE: Please note that applicant is required to remove Site Notice on receipt of Notification from Planning Authority of decision.

NOTE: Please note all observations/submissions have been taken into consideration when making this decision.

NOTES

(A) REFUND OF FEES SUBMITTED WITH A PLANNING APPLICATION

Provision is made for a **partial refund** of fees in the case of certain repeat applications submitted within a period of twelve months where the full standard fee was paid in respect of the first application and where both applications relate to developments of the same character or description and to the same site. An application for a refund must be made in writing to the Planning Authority and received by them within a period of eight weeks beginning on the date of Planning Authority's decision on the second application. For full details of fees, refunds and exemptions the Planning & Development Regulations, 2001 should be consulted.

(B) APPEALS

- 1 An appeal against the decision may be made to An Bord Pleanála by the applicant or ANY OTHER PERSON who made submissions or observations in writing to the Planning Authority in relation to this planning application within four weeks beginning on the date of this decision (NB Not the date on which the decision is sent or received). A person who has an interest in land adjoining land in respect of which permission has been granted may within the appropriate period and on payment of the appropriate fee apply to the Board for Leave to Appeal against that decision.
- 1 Every appeal must be made in writing and must state the subject matter and full grounds of appeal. It must be fully complete from the start. Appeals should be sent to
The Secretary, An Bord Pleanála, 64 Malborough Street, Dublin 1
- 2 An appeal lodged by an applicant or his agent or by a third party with An Bord Pleanála will be invalid unless accompanied by the prescribed fee. A schedule of fees is at 7 below. In the case of third party appeals, a copy of the acknowledgement of valid submission issued by F C C must be enclosed with the appeal.
- 3 A party to an appeal making a request to An Bord Pleanála for an oral Hearing of an appeal must, in addition to the prescribed fee, pay to An Bord Pleanála a further fee (see 7 (f) below).
- 4 Where an appeal has already been made, another person can become an "observer" and make submissions or observations on the appeal. A copy of the appeal can be seen at the Planning Authority's office.
- 5 If the Council makes a decision to *grant permission/ retention/ outline/ permission consequent on the grant of outline* and there is no appeal to An Bord Pleanála against this decision, a final grant will be made by the Council as soon as may be after the expiration of the period for the taking of such an appeal. If every appeal made in accordance with the Acts has been withdrawn, the Council will issue the final grant as soon as may be after the withdrawal.
- 6 Fees payable to An Bord Pleanála from 5th September 2011 are as follows

Case Type

Planning Acts

(a) Appeals against decisions of Planning Authorities

Appeal

(i) 1 st party appeal relating to commercial development where the application included the retention of development	€4,500 or €9,000 if an EIS or NIS involved
(ii) 1 st party appeal relating to commercial development (no retention element in application)	€1,500 or €3,000 in EIS or NIS involved
(iii) 1 st party appeal non-commercial development where the application included the retention of development	€660
(iv) 1 st party appeal solely against contribution condition(s) – 2000 Act Section 48 or 49	€220
(v) Appeal following grant of leave to appeal (An application for leave to appeal is also €110)	€110
(vi) An appeal other than referred to in (i) to (v) above	€220
(b) Referral	€220
(c) Reduced fee for appeal or referral (applies to certain specified bodies)	€110
(d) Application for leave to appeal (section 37(6)(a) of 2000 Act)	€110
(e) Making submission or observation (specified bodies exempt)	€50
(f) Request for oral hearing under Section 134 of 2000 Act	€50

NOTE: the above fee levels for planning appeals and referrals remain unchanged from those already in force since 2007 (but note the addition of NIS in (i) and (ii) above).

Fees apply to: All third party appeals at 7(a)(iv) above except where the appeal follows a grant of leave to appeal; First party (section 37 appeals) planning appeals not involving commercial or retention development, an EIS or NIS. All other (non section 37) first party appeals.

These bodies at 7(c) above are specified in the Board's order which determined fees. They include planning authorities and certain other public bodies e.g. National Roads Authority, Irish Aviation Authority.

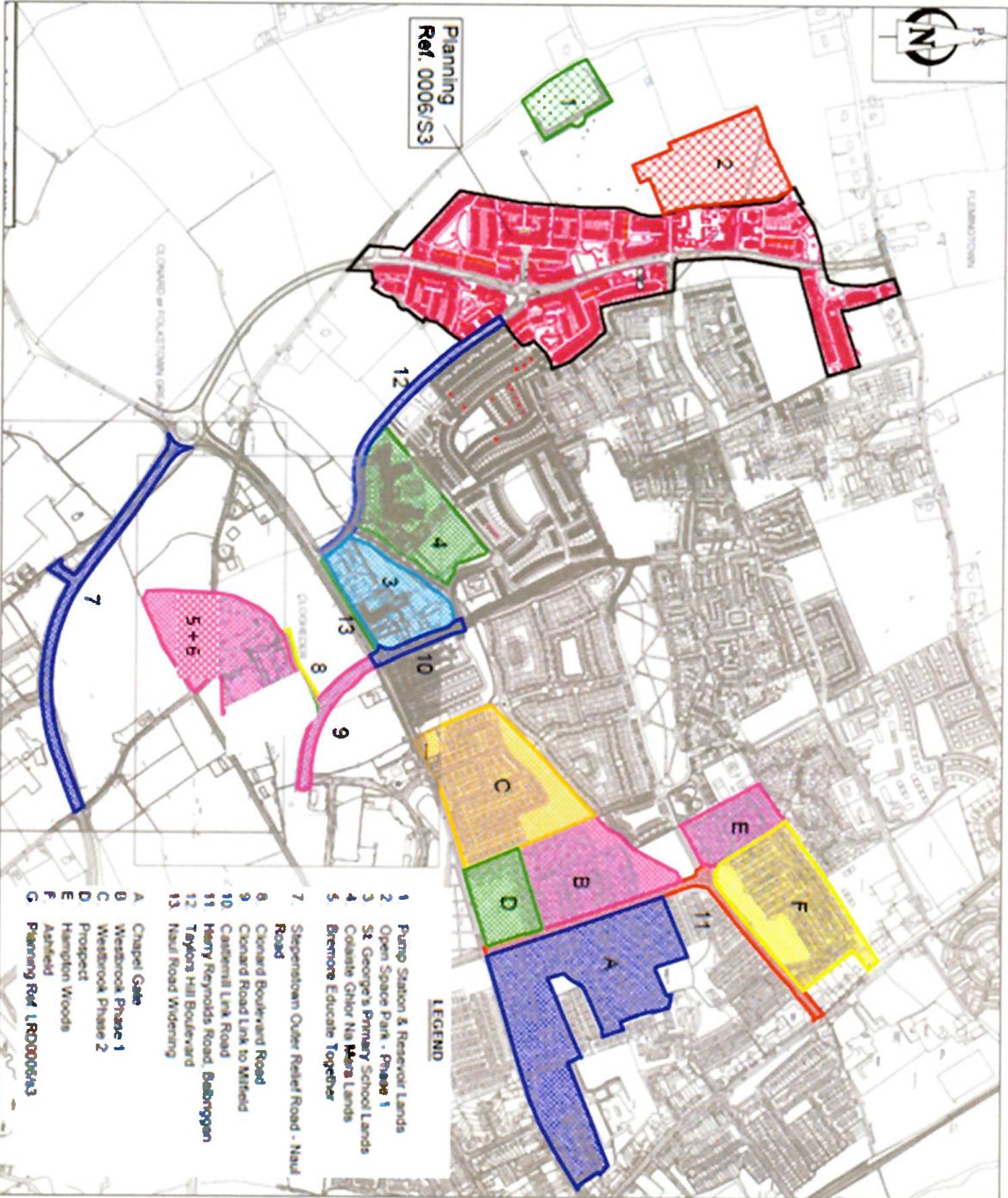
NB. This guide does not purport to be a legal interpretation of the fees payable to the Board. A copy of the Board's order determining fee under the Planning Act is obtainable from the Board. Further information about fees under other legislation may be found in the appropriate legislation and is also available from the Board.

If in doubt regarding any of the above appeal matters, you should contact An Bord Pleanála for clarification at **(01) 8588 100**

Appendix B Dean Swift Property Holdings Unlimited Company – Balbriggan Land Map



Planning
Ref. 0006/S3



LEGEND

- 1 Pump Station & Reservoir Lands
- 2 Open Space Park - Phase 1
- 3 St. George's Primary School Lands
- 4 Colasie Ghior Ha Mera Lands
- 5 Brenmore Educate Together
- 7 Saperstown Outer Retail Road - Naul Road
- 8 Clonard Boulevard Road
- 9 Clonard Road Link to Merfeld
- 10 Casternill Link Road
- 11 Harry Reynolds Road, Babinagan
- 12 Taylors Hill Boulevard
- 13 Naul Road Widening
- A Chapel Gate
- B Westbrook Phase 1
- C Westbrook Phase 2
- D Prospect
- E Hangton Woods
- F Ashfield
- G Planning Ref. LRDD0006/S3

Appendix C Alternative Design Option Architectural Drawings as prepared by Tégos Architects

Phase 1; Hampton Central

Unit Type	1 bed unit	2 bed unit	3 bed unit	4 bed unit	Total
Houses		36	52		88
Duplexes	2	9	7		18
Apartments	17	19			36
Total	19	64	59		142

Phase 2; Hampton South

Unit Type	1 bed unit	2 bed unit	3 bed unit	4 bed unit	Total
Houses		16	55		71
Duplexes	5	9	4		18
Apartments	6	8			14
Total	11	33	59		103

Phase 3; Hampton North

Unit Type	1 bed unit	2 bed unit	3 bed unit	4 bed unit	Total
Houses		28	56		84
Duplexes	7	9	8		24
Apartments	6	14			20
Total	13	51	64		128

Phase 4; Flemington Park

Unit Type	1 bed unit	2 bed unit	3 bed unit	4 bed unit	Total
Houses		36	36	14	86
Duplexes	7	3	2		12
Apartments	6	20			26
Total	13	59	38	14	124

Appendix D Alternative Design Option Drawings as prepared by IS Design (Landscape)

DRAWING REGISTER										
Project: North West Balbriggan Residential Development, Balbriggan, Co. Dublin				Day	18	20	19			
Project no: MAL-019-20				Month	05	10	03			
Client: Dean Swift Property Holdings				Year	23	23	24			
Drawing title	Dwg. no	Size	Scale							
Landscape Plan – Sheet 1 of 8	MAL-019-20-P01	A1	1:500	√	A	B				
Landscape Plan – Sheet 2 of 8	MAL-019-20-P02	A1	1:500	√	A	B				
Landscape Plan – Sheet 3 of 8	MAL-019-20-P03	A1	1:500	√	√					
Landscape Plan – Sheet 4 of 8	MAL-019-20-P04	A1	1:500	√	A	B				
Landscape Plan – Sheet 5 of 8	MAL-019-20-P05	A1	1:500	√	A	B				
Landscape Plan – Sheet 6 of 8	MAL-019-20-P06	A1	1:500	√	A	B				
Landscape Plan – Sheet 7 of 8	MAL-019-20-P07	A1	1:500	√	A	B				
Landscape Plan – Sheet 8 of 8	MAL-019-20-P08	A1	1:500	√	A	B				
Link to Class 1 Park	MAL-019-20-P09	A1	1:200	√						
Landscape Details – Sheet 1 of 4	MAL-019-20-P10	A1	As shown	√						
Landscape Details – Sheet 2 of 4	MAL-019-20-P11	A1	As shown	√						
Landscape Details – Sheet 3 of 4	MAL-019-20-P12	A1	As shown	√	A					
Landscape Details – Sheet 4 of 4	MAL-019-20-P13	A1	As shown	√						
Planting details & images	MAL-019-20-P14	A1	As shown	√						
Existing hedgerows to be retained and removed and details	MAL-019-20-P15	A1	As shown	√						



35 The Avenue, Highfield,
Ballincollig, Co. Cork
Tel. 087 6292437
Email; isdesigncork@gmail.com

Play areas details Sheet 1 of 3	MAL-019-20-P16	A1	1:200	√						
Play areas details Sheet 2 of 3	MAL-019-20-P17	A1	1:200	√						
Shared surface street details	MAL-019-20-P18	A1	1:100	√	A					
Sections of Public Open Space; Sheet 1 of 5	MAL-019-20-P19	A1	1:100	√		A				
Sections of Public Open Space; Sheet 2 of 5	MAL-019-20-P20	A1	1:100	√		A				
Sections of Public Open Space; Sheet 3 of 5	MAL-019-20-P21	A1	1:100	√		A				
Sections of Public Open Space; Sheet 4 of 5	MAL-019-20-P22	A1	1:100	√		A				
Sections of Public Open Space; Sheet 5 of 5	MAL-019-20-P23	A1	1:100			√				
Play areas details Sheet 3 of 3	MAL-019-20-P24	A1	1:200			√				
Public Open Spaces in surrounding lands	MAL-019-20-P25	A1				√				
Landscape Report	MAL-019-20-PR01	A4	n/a	√						
Distribution:										
Emma Conneely Pierce	Dean Swift Property Holdings			E	E	E				
Richard Collins	Ferreira Architects			E	E	E				
Martin Peters	MPA Engineers			E	E	E				
Kevin Hughes	Hughes Planning Consultants			E	E	E				

Appendix E Revised NIS and Response Letter as prepared by Altamar Ltd.

ALTEMAR

Marine & Environmental Consultancy

The Secretary,
An Bord Pleanála,
54 Marlborough Street,
Dublin 1, 001 V902

14th March 2024

Ref: Refusal Large-scale Residential Development (LRD) at Balbriggan, Co. Dublin. Fingal County Council (LRD0006/S3)

To whom it may concern.,

Altemar are appointed ecologists for the proposed development for Large-scale Residential Development (LRD) at Balbriggan, Co. Dublin. Fingal County Council (LRD0006/S3) and we wish to make the following points:

AA Screening and Natura Impact Statement

The grounds for refusal included the following statements:

“Following the submission of Additional Information, the Planning Authority is satisfied that no significant effects to the Qualifying Interest of any Designated Sites are likely to occur as a result of hydrological links to any downstream receptors.

Fingal County Council, following the precautionary principal, are not however satisfied that sufficient scientific evidence has been provided to demonstrate that the development site is not an ex-situ feeding area of significant importance by any Qualifying Interests. In the absence of scientific data in the NIS to support assumptions that the lands are not suitable for SCI of any Designated Sites, robust bird survey data would be required.

While the habitat and bird surveys that were undertaken did provide data on the habitats present and the use of the site by certain birds. the NIS failed to outline how this data indicated that the permanent loss or this site would not have potential to significantly affect any Qualifying Interests.

In light of their Conservation Objectives. There is no specific mention or reference to which bird species identified are listed as SCIs of the North-West Irish Sea SPA or any other SPA, or assessment as to what extent they may be dependent on the habitats present within the site.

No assessment was carried out to determine if there is suitable alternative habitat in the surrounding areas which can accommodate displaced birds. This is considered lacunae in the submitted NIS, which is not acceptable in accordance with the guidelines on Appropriate Assessment. Further Information regarding SCI bird species outlined above would be required to remove any scientific doubt from this determination and enable such effects to be excluded.

Accordingly. Planning Authority considers that insufficient information is available to enable it to make a full determination as to whether the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of nearby European Sites or their qualifying species.

As per Section 177V of the Planning and Development Act 2000, as amended. a competent authority shall give consent for proposed development only after having determined that the proposed development shall not adversely affect the integrity of a European site. As the Planning Authority cannot conclude this, it is precluded from granting permission.”

Response

1) Wintering Bird Surveys.

As outlined in Appendix I of the AA Screening/Natura Impact Statement a wintering bird assessment was carried out (January to March 2023). As outlined in Appendix I *"Birds observed at the Flemington Lane site are typical of the habitats present. The species assemblage is a reflection of the agricultural fields, hedgerows and overgrown waste ground habitats within and around the site and the birds observed are typical of birds occurring in these habitats in North County Dublin in Winter."* In relation, to yellowhammer (redlisted) as outlined in Appendix 5.2 "A single individual was flushed from one of the OSR fields on the 18th March. A male and female was observed on the 21st of March. A scarce bird in Ireland, but can be quite frequently observed in parts of North County Dublin and Meath."

As outlined in Appendix 1b of the AA Screening NIS a full wintering bird survey for the 2023/2024 season have been carried out on site. This has included two surveys per month from October 2023 to March 2024, by the ornithologist Joseph Adamson MCIEEM. These surveys were ongoing since the LRD submission but it is important to note that the full set of wintering bird surveys do not alter the lack of importance of the site to qualifying interests of nearby SPA that was previously outlined in the original submission. No significant numbers of wintering birds from neighbouring Natura 2000 sites have been noted on site. As noted in Appendix 1b *"Birds observed at the Flemington Lane site are typical of the habitats present. The species assemblage is a reflection of the agricultural fields, hedgerows and overgrown waste ground habitats within and around the site and the birds observed are typical of birds occurring in these habitats in North County Dublin in Winter."*

The agricultural grassland fields to the west of the site within the boundary of the water treatment plant were devoid of birds for the most part, with the exception of birds observed flying overhead and occasional foraging rooks when the fields were saturated due to frequent rain events." It is also important to note that of all the qualifying interests of nearby SPA's only Herring gull were noted on site throughout all of the wintering bird surveys and with that, the maximum amount observed on site were *"20 birds sitting and occasionally foraging in the stubble field by the road leading up to the Water Treatment Plant on the 4th of November 2023."*

As seen in Appendix 2 the proposed development site consists primarily of arable crops (Rape) during the site assessments. This would be considered a habitat of low importance to wintering birds. The site is not of significance to wintering birds and is not an ex-situ site for wintering birds for proximate SPAs.

2) Review of Appropriate Assessment Screening & Natura Impact Statement For proposed Large-scale Residential Development (LRD)

As outlined in the SLR assessment of the AA Screening and NIS which would inform FCC decision *"We note that these surveys miss the key winter months of December and January, and the survey information therefore falls short of the best scientific information upon which conclusions on site integrity should be based."*

*Moreover, while both reports mention winter birds and those of BoCCI importance, there is no specific mention or reference to those bird species which are listed as SCIs of the North-West Irish Sea SPA or any other SPA, and how they may be utilising and/or dependant on the habitats present within the site. For example, Herring Gull *Larus argentatus* is an SCI species for both the North-West Irish Sea SPA and the next nearest River Nanny Estuary and Shore SPA, and this species was seen during both sets of the winter bird surveys. However, no assessment was made of their use of, or reliance on the stubble fields in which they were observed."*

There still needs to be additional information on whether, and to what extent, Herring Gull are reliant on the habitats found on the Project site and if there is suitable alternative habitat in the surrounding areas which can accommodate displaced birds. It needs to be assessed if the loss of habitat used."

The comments above by SLR are the primary comments that lead SLR to come to the following conclusion:

"SLR would concur with this overall conclusion, however, the assessment of SCI bird species could be better described, and a more definitive assessment should be presented based on the SCI bird species seen on site, their dependency on the habitats present, the availability of alternative habitats in the area, and if there is likely to be any effect on their conservation condition within the SPAs.

It is the opinion of SLR that the overall determination by Altemar that the proposed development would not give rise to adverse effects on the integrity of any European site is correct, but additional information regarding SCI bird species outlined above is needed to remove any scientific doubt from this determination and enable such effects to be excluded."

The updates AA Screening and NIS prepared by Altemar has included the updated wintering bird surveys which clearly and categorically show beyond scientific doubt that the site is not of importance to qualifying interests of nearby SPA's. The conclusions of the updated AA Screening and NIS are no different to the previous versions of the AA Screening and NIS. However, it importantly provides additional information on the over wintering bird data and specifically addresses the presence of a maximum of 20 herring gulls on site. These were the only qualifying interests of nearby SPA's on site throughout all of the Altemar and Joseph Adamson MCIEEM surveys.

In relation to Herring Gull (only qualifying interest of nearby SPA's observed on site) (Appendix 2 of the AA Screening/NIS) Joseph Adamson (Ornithologist) states the following:

"This report is also a response to concerns that were raised about the occurrence of herring gull observed at the site in the survey of 2023, and that the occurrence of this species at the site was not considered in relation to the species being one of the qualifying interests in the newly established North-West Irish Sea Special Protection Area (SPA). A number of points need to be raised regarding the occurrence of this species at the site.

- The Winter survey report carried out in February and March 2023 mentioned that birds were observed flying overhead. It did not mention that the fields within the site were being utilised by herring gulls. Afterall, during that survey, all fields, with the exception of a field under grass, were planted with Oil Seed Rape. The following summer, the fields were under Corn. It was only when the Corn was harvested and the fields became Corn stubble fields, when the winter survey commenced, that herring gulls, and indeed corvids, such as rooks and jackdaws were present.*
- The gulls only started to occur at the site when the fields were under stubble. Due to constant rain events, invertebrates within the soil rise to the surface, which makes it easier for gulls to feed on them. Most of the time the gulls were sitting, in small numbers.*
- It must be noted that only one stubble field within the entire site, namely the field adjacent to the road leading up to the Water Treatment Plant, was occupied by gulls and corvids. It must be noted that during the site visits on the 4th of November and the 24th of December herring gulls were present in this particular field, in double digit numbers. The weather on these days was extremely inclement and the birds were merely sitting and sheltering from the strong winds.*
- During the 18th of January site visit, it was noted that the soil within this particular stubble field had been disturbed, due to Water Treatment Plant workers installing water valves by the road. The soil had been disturbed in strips, where pipes were laid, and it was on these strips where gulls and corvids were feeding.*
- It is not unusual for gull species to occur and feed in fields in inland sites. A recently ploughed field can attract hundreds of gulls, as indeed, a field where the first cut of silage has taken place, or any grass cutting in general.*
- Herring gulls were present flying around the site on all monthly visits. They were also abundant flying over Balbriggan town. This is to be expected in any coastal town in Ireland. It is known that they breed on roof tops in the town and are regarded as a nuisance species by residents in the area.*
- In conclusion, just because herring gulls were present within the survey site does not necessarily mean that this is their preferred habitat within the area. During the final site visit*

on the 11th of March, there were no herring gulls present. However, on the same date, the author observed a large number of c.3,000+ gulls, mainly comprised of herring gulls, feeding on the tideline of Gormanston Strand, located <5km northeast of the study site. The large number of gulls was present after a north-easterly storm on Saturday the 9th of March."

As can be seen from the survey data and updated AA Screening/NIS the site is clearly not an ex-situ site for qualifying interests of nearby SPA's. The argument to refuse the proposed development on the grounds of importance to nearby SPA's is fundamentally flawed. The habitats on site are not of importance to the qualifying interests of nearby SPA's. It is also important to note that the only qualifying interests of the nearby SPA's observed on site are herring gull, where a maximum of 20 birds were observed. Clearly, there is sufficient evidence to show the lack of importance of this site to qualifying interests of nearby SPA's and basing a refusal on the grounds of having 20 herring gulls on site on one occasion would effectively set a precedence and sterilise nearly every development site in coastal areas of the east coast of Ireland including urban areas, where it is clear that such data shows that there would be no adverse effects on the integrity of Natura 2000 sites.

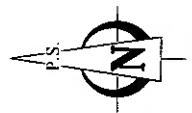
Kindest Regards



Bryan Deegan (CIEEM), Director, Altemar Limited.

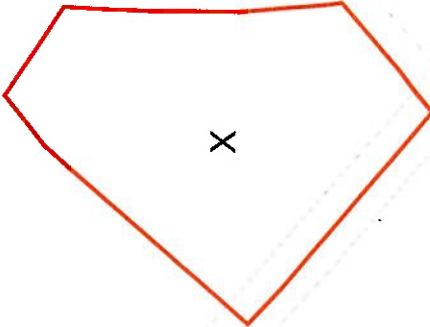
**Altemar Ltd., 50 Templecarrig Upper,
Delgany, Co. Wicklow. Directors: Bryan Deegan and Sara Corcoran**

Appendix F Legal Documents as prepared by LK Shields.



718329 E
763539 N

718081 E
763355 N



Description
Digital Landscape Model (DLM)

Publisher / Source
Ordnance Survey Ireland (OS)

Cap-Extent / Area of Interest (AOI)
ULX:LY: 718082.6273, 763334.424
LRX:LRX: 718026.6273, 763334.424
ULX:UY: 718042.6273, 763364.424
URX:URY: 718055.6273, 763344.424

Projection / Spatial Reference
Projection: IRGANE196 Irish Transverse Mercator

Centre Point Coordinates
X,Y: 718334.1273, 763448.424

Reference Index
Map Series | Map Sheets
1:2,500 | 2583-D
1:2,500 | 2583-B

Data File(s) / Date
Lands - 01-Mar-2024

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The representation on the map of a road, track or boundary is not evidence of the existence of a right of way.

Ordnance Survey maps never show legal property boundaries nor do they show ownership of physical features.

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Transfer Map X

Lands at Clonard,
Babriggan, Co Dublin

Total Lands To Be Transferred
From Folio DN137247F
Outlined In Red - Marked X
Area X = 0.329 Ha / 0.814 Ac
OS Map Ref.: 2583-B & D

Surveyed, Computed & Certified By
Greg Rafter, Premier Surveys Ltd.
Date: 1st March 2024

Greg Rafter, MIS
Premier Surveys Ltd.

Lands at Clonard
Babriggan, Co. Dublin

PREMIER SURVEYS LTD.
Geo-surveying and Mapping Service
No. 4 Old Baker St., Thurles, Co. Tipperary, Tel/Fax 0504-26714
E-mail: info@premier-surveys.com

Job: 01-03-24
Scale: 1:1000 @ A1
Drawing No: 2403010-TMX

Checked: G.R.
Drawn: G.R.
Drawing no: 2403010-TMX

DATED

2024

DEAN SWIFT PROPERTY HOLDINGS UNLIMITED COMPANY

AND

[FINGAL COUNTY COUNCIL]

DEED OF TRANSFER

LK SHIELDS
YOUR LEGAL COUNSEL

www.lkshields.ie
email@lkshields.ie

DUBLIN | LONDON | GALWAY

Ref CA/7180.9002

PROPERTY REGISTRATION AUTHORITY

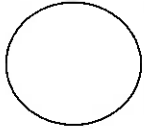
COUNTY DUBLIN

FOLIO (PART) 137247F

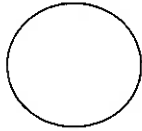
TRANSFER dated the _____ day of _____ 2024

DEAN SWIFT PROPERTY HOLDINGS UNLIMITED COMPANY the registered owner of Folio 137247F of the Register of Freeholders County Dublin in consideration of the sum of €10 (ten euro) (the receipt of which is hereby acknowledged) as beneficial owner **HEREBY TRANSFERS ALL THAT** part of the property described in Folio 137247F of the Register of Freeholders County Dublin as more particularly shown on the map appended hereto and thereon outlined in red to **FINGAL COUNTY COUNCIL**.

The address of the Purchaser in the State for the service of notices is [].

<p>GIVEN under the Common Seal of DEAN SWIFT PROPERTY HOLDINGS UNLIMITED COMPANY and this DEED has been DELIVERED:</p>	
--	---

	<p style="text-align: right;">Director</p> <hr/> <p style="text-align: right;">Director/Secretary</p>
--	---

<p>GIVEN under the Common Seal of FINGAL COUNTY COUNCIL and this DEED has been DELIVERED:</p>	<p style="text-align: right;"></p> <hr/> <p style="text-align: right;">Authorised Signatory</p> <hr/> <p style="text-align: right;">Authorised Signatory</p>
---	--

DATED

2024

**STATUTORY DECLARATION THAT PROPERTY IS NOT
A FAMILY HOME OR A SHARED HOME WHERE IT IS
OWNED BY A COMPANY AND HAS FULL COMMERCIAL
USE**

LK SHIELDS
YOUR LEGAL COUNSEL

LK Shields Solicitors LLP
email: lkshields@lkshields.ie
www: lkshields.ie

Dublin | London | Galway

Ref CA/7180.9002

**STATUTORY DECLARATION THAT PROPERTY IS NOT A FAMILY HOME
OR A SHARED HOME WHERE IT IS OWNED BY A COMPANY**

I, [●], of **DEAN SWIFT PROPERTY HOLDINGS ULC** having its registered office at 5 Clarinda Park North, Dun Laoghaire, Co Dublin, aged 18 years and upwards **SOLEMNLY AND SINCERELY DECLARE** as follows:

- 1 This declaration relates to the property being lands comprised in part of Folio 137247F of the Register of Freeholders in the County of Dublin (the "**Property**").
- 2 The Property is owned by Dean Swift Property Holdings ULC (the "**Company**") of which I am a director.
- 3 The Property is not a family home within the meaning of that term in the Family Home Protection Act 1976 as amended by the Family Law Act 1995 (the "**1995 Act**").
- 4 The Property is not a shared home within the meaning of the term "shared home" in Section 27 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (the "**2010 Act**").
- 5 No married couple, or no civil partner within the meaning of that term in Section 3 of the 2010 Act, or no cohabitant or qualified cohabitant within the meaning of the terms "cohabitant" and "qualified cohabitant" respectively in Section 172 of the 2010 Act has ordinarily resided therein since the Company acquired an interest in the Property.
- 6 No lease, letting agreement, tenancy agreement, licence or similar agreement has been made by the Company which would entitle any person to reside in the Property. No officer, director, member, tenant, invitee or licensee of the Company has ever resided therein.
- 7 None of the provisions of the Family Law Act 1981 (the "**1981 Act**") or none of the provisions of Part 15 of the 2010 Act apply to the Property because the Property is owned by the Company which is incapable of entering into an agreement to marry, and incapable of being a cohabitant or a qualified cohabitant within the meaning of the terms "cohabitant" and "qualified cohabitant" respectively in Section 172 of the 2010 Act, and no proceedings of any kind have been threatened or instituted in relation to the Property under any of the provisions of the 1981 Act or the 2010 Act.
- 8 No proceedings of any kind have been instituted or threatened, and no application or order of any kind has been made, in relation to the Property, under any of the provisions of the Judicial Separation and Family Law Reform Act 1989, the 1995 Act, the Family Law (Divorce) Act 1996 (the "**1996 Act**") or the 2010 Act, and the assurance of the Property to the party or parties mentioned in paragraph 11 hereof is not a disposition for the purposes of defeating a claim for relief as defined in Section 35 of the 1995 Act, Section 37 of the 1996 Act and Section 137 of the 2010 Act.
- 9 The Property is not subject to any trust, licence, tenancy or proprietary interest in favour of any person or body corporate arising by virtue of any arrangement, agreement or contract entered into by the Company, or by virtue of any direct or indirect financial or other contribution to the purchase thereof, or by operation of law, or otherwise, and the Property is held free from encumbrances.
- 10 I understand the effect and import of this declaration, which has been fully explained to me by the Company's solicitor, and I am authorised by the Company to make this declaration.

11 I make this solemn declaration conscientiously believing it to be true for the satisfaction of **FINGAL COUNTY COUNCIL** and pursuant to the provisions of the Statutory Declarations Act 1938.

DECLARED before me
(name of commissioner/practising solicitor in capitals)

a commissioner for oaths / practising solicitor

by []

who is personally known to me

[Director]

or: who is identified to me by
who is personally known to me

at

in the City/County of

this day of 2024

Commissioner for Oaths / Practising Solicitor

DATED

2024

SECTION 72 DECLARATION

LK SHIELDS
YOUR LEGAL COUNSEL

LK Shields Solicitors LLP
email@lkshields.ie
www.lkshields.ie

Dublin | London | Galway

Ref CA/7180.9002

LAND REGISTRY

County Dublin

Folio 137247F

I, [●], of **DEAN SWIFT PROPERTY HOLDINGS ULC** having its registered office at 5 Clarinda Park North, Dun Laoghaire, Co Dublin aged 18 years and upwards **SOLEMNLY AND SINCERELY DECLARE** as follows:

- 1 This declaration relates to the property being lands comprised in part of Folio 137247F of the Register of Freeholders in the County of Dublin (the "**Property**"). The Property is owned by Dean Swift Property Holdings ULC (the "**Company**") of which I am a director.
- 2 I am advised that Section 72(1) of the Registration of Title Act 1964 which, subject to the amendments thereto and referred at Clauses 5, 6, 7, and 8 of this Statutory Declaration, is as follows:

"72(1) Subject to subsection (2), all registered land shall be subject to such of the following burdens as for the time being affect the land, whether those burdens are or are not registered, namely -

 - 2.1 estate duty, succession duty, former crown rents, tithe rent charges and payments in lieu of tithe or tithe rent charge;
 - 2.2 land improvement charges and drainage charges;
 - 2.3 annuities or rent charges for the repayment of advances made under the provisions of any of the Land Purchase Acts on account of purchase money;
 - 2.4 rights of the Land Commission or of any person under a vesting order, vesting fiat, final list or transfer order made or published under the Land Purchase Acts;
 - 2.5 rights of the Land Commission upon the execution of an order for possession issued under Section 37 of the Land Act 1927;
 - 2.6 rights of the public or of any class of the public;
 - 2.7 customary rights, franchises and liabilities arising from tenure;
 - 2.8 easements and *profits a prendre*, unless they are respectively created by express grant or reservation after the first registration of the land;
 - 2.9 tenancies created for any term not exceeding twenty-one years or for any less estate or interest, in cases where there is an occupation under such tenancies;
 - 2.10 the rights of every person in actual occupation of the land or in respect of the rents and profits thereof, save where, upon enquiry made of such person, the rights are not disclosed;
 - 2.11 in the case of the land registered with a possessory, qualified or good leasehold title, all rights excepted from the effect of registration;
 - 2.12 a perpetual yearly rent (in this section referred to as the superior rent) which is superior to another such rent (in this section referred to as the registered rent) registered as a burden on registered land and which, as between the said registered

- land and the registered rent, is primarily payable out of the registered rent in exoneration of such land;
- 2.13 the covenants and conditions contained in the deed or other document creating the superior rent, in so far as those covenants and conditions affect such land;
 - 2.14 a purchase annuity payable in respect of a cottage which is the subject of a vesting order under the Labourers Act 1936;
 - 2.15 restrictions imposed by Section 21 of the Labourers Act 1936 on the mortgaging or charging of cottages purchased under that Act;
 - 2.16 rights acquired or in course of being acquired under the Statute of Limitations 1957;
 - 2.17 burdens to which Sections 59 or 73 apply.”

3 I am advised that subsection (2) of Section 72 of the Registration of Title Act 1964 is as follows:

“(2) Where it is proved to the satisfaction of the Registrar that any land registered or about to be registered is exempt from, or has ceased to be subject to, any estate duty, succession duty, former crown rent, tithe rent charge, payment in lieu of tithe or tithe rent charge, land improvement charge, drainage charge or annuity or rent charge for the repayment of any advance made on account of purchase money as hereinbefore is mentioned, the Registrar may enter on the register notice of the fact.”

4 I am also advised that Sections 59 and 73 of the Registration of Title Act 1964, are as follows:

“59.

(1) Nothing in this Act shall affect the provisions of any enactment by which the alienation, assignment, subdivision or sub-letting of any land is prohibited or in any way restricted.

(2) It shall be the duty of the Registrar to note upon the register in the prescribed manner the prohibitive or restrictive provisions of any such enactment; but such provisions shall be, though not registered, burdens on the land under Section 72.”

“73.

(1) A person may be registered as owner of the land with or without all or any of the mines and minerals therein, or as owner of any mines or minerals.

(2) A person registered as owner of land shall not, merely by virtue of such registration, be deemed to be owner of the mines and minerals therein.

(3) Where a person is registered as owner of land, but the registration does not extend to all the mines and minerals therein, all such powers of working, way leaves or rights of way, rights of water and drainage and other powers, easements, rights and privileges for or incident to or connected with the mining purposes, as are for the time being subsisting over the land, and are not created by express grant or reservation after the first registration of the land, shall be, though not registered, burdens on the land under Section 72.”

I am advised that Section 28 of the Landlord and Tenant (Ground Rents) (No. 2) Act 1978 is as follows:

"28

(1) Where a person having an interest in land acquires the fee simple in the land, all covenants subject to which he held the land, other than a covenant specified in subsection (2), shall thereupon cease to have effect and no new covenant shall be created in conveying the fee simple.

(2) In the case of a covenant -

(a) which protects or enhances the amenities of any land occupied by the immediate lessor of the grantee; or

(b) which relates to the performance of a duty imposed by statute on any such person; or

(c) which relates to a right of way over the acquired land or a right of drainage or other right necessary to secure or assist the development of other land

the covenant shall, notwithstanding anything contained in this Act, continue in full force and effect and shall be enforceable as follows:

(i) in the case of a covenant which does not relate to a right of way, right of drainage or other right aforesaid, by any such person or his personal representatives or successors in title, as if the acquisition has not occurred, and

(ii) in the case of a covenant which does so relate, by any person aggrieved by breach of the covenant.

(3) In any case where the fee simple in land was acquired since the commencement of the Act of 1967 by a person who had an interest in the land, any covenant subject to which the grantee held the land, other than a covenant specified in subsection (2), shall be deemed to have ceased to have effect at the date of the acquisition.

(4) Section 72(1) of the Registration of Title Act 1964 (which relates to burdens that affect land without registration) is hereby amended by the insertion of:

"(r) covenants which continue in force by virtue of Section 28 of the Landlord and Tenant (Ground Rents) (No. 2) Act 1978."

5 I am advised that Section 43 of the Gas Act 1976 is as follows:

"43. Section 72 of the Registration of Title Act 1964 is hereby amended by -

(a) the insertion after paragraph (h) of Subsection (i) of the following paragraph:

"(hh) any wayleave which is a wayleave to which this section applies"; and

(b) the insertion after subsection (3) of the following subsection:

"(4) This section applies to any wayleave on, over or beneath the surface of land which -

(a) pursuant to an agreement in writing is granted to or by The Irish Gas Board, or pursuant to an acquisition Order within the meaning of the Gas Act 1976, is granted to that Board, and

(b) tended to be used, or is used, in providing a pipeline for the transmission of gas, and

(c) in case the wayleave is granted under such an agreement, under the agreement it is to be enforceable against persons deriving title to the land under a party to the agreement".

6 I am advised that section 22 of the Gas (Amendment) Act 2000 is as follows:

"22. Section 72 of the Registration of Title Act 1964, is amended by the substitution in subsection (4) (inserted by the Principal Act) of the following paragraph for paragraph (a):

"(a) pursuant to an agreement in writing is granted to or by the Irish Gas Board or a relevant person (within the meaning of section 20 of the Gas (Amendment) Act 2000) or pursuant to an acquisition order within the meaning of the Gas Act 1976, is granted to that Board or such a person, and".

7 I am advised that section 60 of the Registration of Deeds and Title Act 2006 is as follows:

"60. Section 72 (burdens affecting land without registration) of the Act of 1964 is amended in subsection (1)(i) by the insertion of "(or such other period as may be prescribed)" after "twenty-one years".

8 I am advised that regulation 38(2)(b) of the European Communities (Internal Market in Natural Gas and Electricity) Regulations 2011 (S.I. No. 630 of 2011) is as follows:

"(b) Without prejudice to the generality of paragraph (1), reference to the "Board" in section 72 (4) of the Registration of Title Act 1964 (No. 16 of 1964) shall be taken to include the ITO."

9 To the best of my knowledge, information and belief none of the burdens set out in Section 72 of the Registration of Title Act 1964 (as amended), and therein stated to be capable of affecting registered land without registration, and which are not so registered, affect the Property.

10 Before making this Declaration the full effect, meaning and purport of all such burdens was explained to me by my Solicitor and I understood the same.

11 I make this solemn declaration conscientiously believing it to be true for the satisfaction of **FINGAL COUNTY COUNCIL** and pursuant to the provisions of the Statutory Declaration Act, 1938.

DECLARED before me
(name of commissioner/practising solicitor in capitals)
a commissioner for oaths / practising solicitor

by [●]

who is personally known to me

[Director]

or: who is identified to me by
who is personally known to me

at
in the City/County of

this day of 2024

Commissioner for Oaths / Practising Solicitor

Appendix G Letter regarding Housing Need in Balbriggan as prepared by Knight Frank

Emma Conneely
 Dean Swift Property Holdings Unlimited Company
 5 Clarinda Park North,
 Dun Laoghaire,
 Dublin

20th March 2024

RE: Market Report - Balbriggan New Homes

Dear Emma,

Please find our views in relation to the Balbriggan New Homes market outlined below.

Population

As shown in Figure 1, the population of the electoral division of Balbriggan stood at 27,449 in 2022. This represents an increase of 11.5% compared to Census 2016 and 20.9% in relation to Census 2011.

Figure 1: Population growth						
Area	2011	2016	2022	2011-2016	2016-2022	2011-2022
Balbriggan	22,695	24,611	27,449	8.4%	11.5%	20.9%
Fingal	273,991	296,020	330,506	8.0%	11.6%	20.6%
Dublin	1,273,069	1,347,359	1,458,154	5.8%	8.2%	14.5%
State	4,588,252	4,761,865	5,149,139	3.8%	8.1%	12.2%

Source: CSO, Knight Frank Research

These figures are indicative of rapid population growth. By comparison, the rate of population growth recorded in Balbriggan between 2011 and 2022 was faster than Fingal (20.6%), Dublin (14.5%) and indeed the wider State (12.2%).

Housing Stock

However, figure 2 shows that the growth in the population of Balbriggan has exceeded the increase in the housing stock in the area since 2011. Between 2011 and 2016, the increase in the housing stock in Balbriggan of just 1.1% contrasts sharply with the growth in the population of Balbriggan of 8.4%. This pattern was also replicated during the 2016 to 2022 intercensal period where the housing stock in Balbriggan expanded by 8.7% while the population of Balbriggan increased by 11.5%. This indicates that there is a clear shortage of new housing options in Balbriggan.

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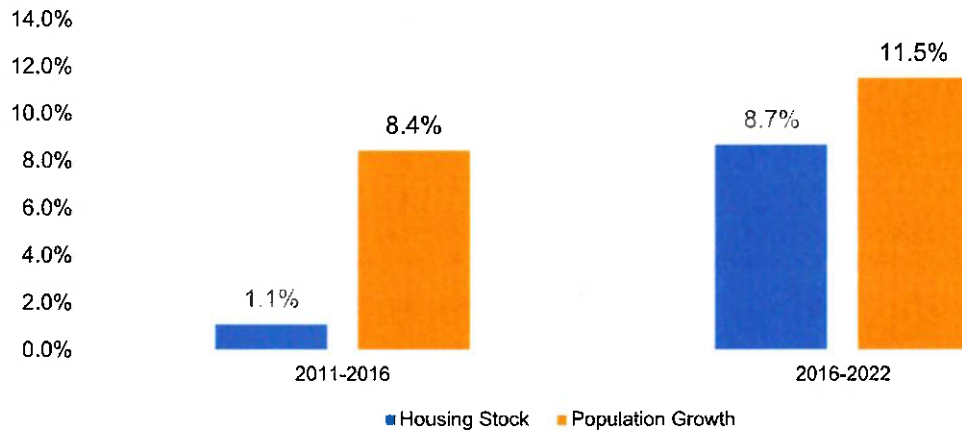
Knight Frank is a registered business name of HT Meagher O'Reilly Limited.

Directors: James D. Meagher, Declan O'Reilly, Adnan Trueick, Paul Hanly, Glenn Kealy, Evan Lonergan, Jim O'Reilly, Laura O'Connell, Peter Rowan, Tim MacMahon, Joan Henry, Director of Capital Markets - Ross Fogarty.

Divisional Directors: Finin O'Driscoll, Gavin Maguire, Emma Courtney, Tom Fahy, Marcus Bell.

Company Reg. No. 385044. PSR Reg. No. 001266.

Figure 2: Change in population and housing stock in Balbriggan 2011-2022



Source: CSO, Knight Frank Research

Housing Size

This fact is further supported by trends in the average household size which are displayed in Figure 3. While the average household size in Balbriggan had been falling in line with broader demographic trends (such as declining fertility rates and a shift in household structures away from extended families living together under the same roof towards more households being composed of 'nuclear' families, single-parent families and people living alone), **the shortage of housing that has existed over the last decade has driven occupancy sizes upwards, rising from 2.85 in 2011 to 3.02 in 2022.** While the average household size in Balbriggan in 2022 is below Fingal (3.06), it is considerably higher than Dublin (2.81) and the State (2.80).

Figure 3: Average household size					
Area	2002	2006	2011	2016	2022
Balbriggan	3.03	2.72	2.85	3.02	3.02
Fingal	3.25	3.00	2.95	3.06	3.06
Dublin	2.97	2.83	2.73	2.81	2.81
State	3.06	2.90	2.78	2.80	2.80

Source: CSO, Knight Frank Research

Some indications of the complex nature and distribution of persons per household is seen in Figure 4. During the past decade, the number of one (20% to 17%) and two (28% to 25%) person households in Balbriggan has been falling while the number of three person households has remained stable (21%). **Additionally, and most importantly, the number of four person households and higher in Balbriggan ((32% to 37%) has been rising.** This can only be interpreted as another indication of the

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Divisional Directors: Finin O'Driscoll, Gavin Maguire, Emma Courtney, Tom Fahy, Marcus Bell.

Company Reg. No. 385044. PSR Reg. No. 001266.

shortage of housing options in the Balbriggan area. A similar patterns has also been observed in the wider Fingal area.

Figure 4: Total number (and percentage) of persons per household in Balbriggan

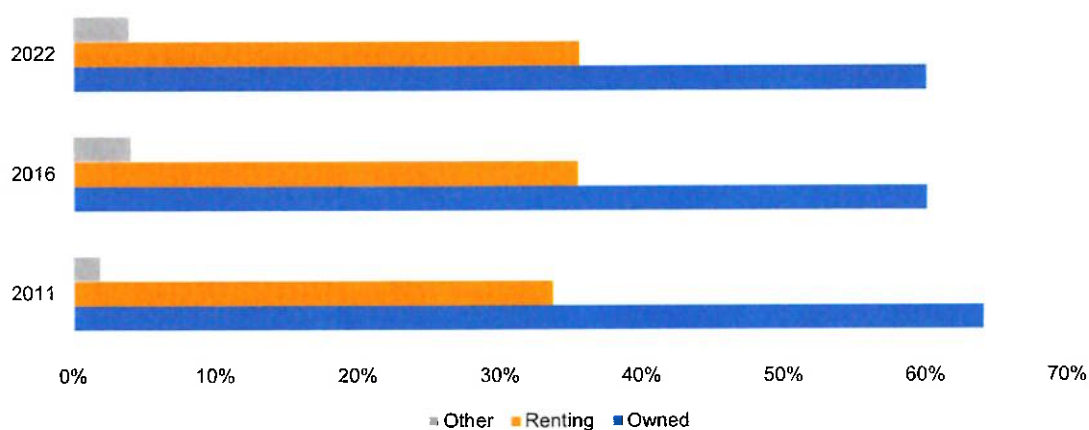
	2011	2016	2022	2011%	2016%	2022%
1 person	1,592	1,421	1,566	20%	17%	17%
2 person	2,212	2,014	2,265	28%	25%	25%
3 person	1,639	1,712	1,909	21%	21%	21%
4 person	1,462	1,723	1,934	18%	21%	21%
5 person	699	811	915	9%	10%	10%
6 person	260	319	357	3%	4%	4%
7 person	80	107	95	1%	1%	1%
8 person	32	48	52	0%	1%	1%
Total	7,976	8,155	9,093	100%	100%	100%

Source: CSO, Knight Frank Research

Housing Ownership

Finally, figure 5 shows that the share of owner occupied dwellings has declined in Balbriggan over the last decade, falling from 64% in 2011 to 60% in 2022, in tandem with the shortage of housing options in the area. Paralleling this is the rise in private renting in Balbriggan which has grown from 34% to 36% during the same time period.

Figure 5: Households by occupancy status in Balbriggan



Source: CSO, Knight Frank Research

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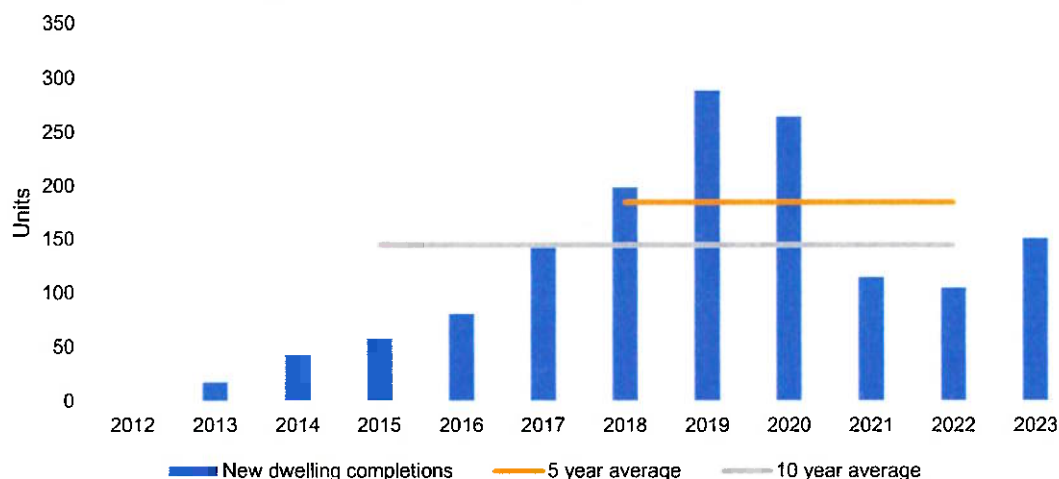
Company Reg. No. 385044. PSR Reg. No. 001266.

Future Housing Demand

Looking ahead, the Fingal County Development Plan estimates that 1,900 units will need to be delivered in Balbriggan between 2023-2029 in order to meet demand during this period. Given that the estimate of demand in the plan is based on data from Census 2016, it is likely that the plan is considerably underestimating population growth and inward migration that has occurred since 2016 which means that demand, and hence the number of units required, is actually higher.

Nevertheless, in order to meet the estimate of demand included in the Fingal County Development Plan, 317 units would need to be delivered each year in Balbriggan during the period 2023-2029. Figure 6 shows new dwelling completions in Balbriggan during the period 2012-2023. The average number of dwellings delivered in Balbriggan over the 5 year period between 2018-2022 was 185 units while the average over the 10 year period between 2015-2022 was 145 units. Both of these figures are approximately half of the annual requirement between 2023-2029. Most importantly, just 151 units were delivered in 2023, the first year of the new development plan. It is clear that a significant increase in housing supply is needed in Balbriggan over the coming years to ensure that the area doesn't slip further behind in meeting its housing requirements. It is therefore vital that the proposed scheme is granted planning permission.

Figure 6: New dwelling completions in Balbriggan



Source: Fingal County Development Plan 2023-2029, CSO, Knight Frank Research

We trust this is sufficient for what you require, however, should you have any further queries please do not hesitate to contact us.

Yours sincerely,

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Knight Frank is a registered business name of HT Meagher O'Reilly Limited.

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