



SPOKESPERSON FOR HOUSING, PLANNING AND LOCAL GOVERNMENT

Darragh O'Brien TD

AN BORD PLEANÁLA  
DUBLIN FINGAL

LDG- 023158-20

ABP- \_\_\_\_\_

06 JAN 2020

Fee: € 20 Type: Cash

Time: 16:23 By: Hazel



6<sup>th</sup> January 2020

**Private & Confidential**  
The Secretary  
An Bord Pleanála  
64 Marlborough Street  
Dublin 1

**Re: ABP Reference SHD /013/19**

Proposed development of 58 houses, 8 maisonettes and 76 apartments on a site of 3.9ha located to the north of Seamount Road, Malahide, County Dublin lodged on the 22nd November.

Dear Sir/Madam,

I would like to submit the following observations in relation to the SHD application referred to above. Please find enclosed the requisite payment for making an observation (€20).

I wish to put on record that this an observation and not an object against homes being built on this site but to highlight issues regarding access.

The main objection of the residents is to the use of their restricted estate road network to provide for the principle access to the development which will be seriously injurious to residential amenity, traffic and pedestrian safety and convenience in their estate.

**Background to Observation.**

A.1 Seamount Abbey is a development of 32 mainly detached dwellings located off Seamount Road close to its junction with the R124 the main road down to the town centre. Six of the houses front directly on to Seamount Road with the remainder to the rear in a cul de saced road layout of short road sections. Seamount Road has been heavily developed in the past 15 years with Mountfield the main estate together with smaller estates and infill development. At the eastern end of the road at Jameson Orchard is a large mix of apartments and houses under construction. Traffic generation at peak morning times results in tail backs beyond the estate junction and will obviously get worse when this proposal and Jameson Orchard are fully completed. Given the low traffic levels generated in the estate at present and its cul de saced layout the area is particularly quiet and conducive to child play on the streets in what is appreciated as a secure and safe housing environment.

A.2 Since the completion of this estate in 2007, the roads, open spaces, lighting, footpaths and piped services have been fully maintained by the residents by way of a management company to which each resident pays a yearly maintenance charge. This estate has never been offered for taking in charge by Fingal Council nor are there plans to do so in the near

12



future. A proposal under Reg No F14A/0106 for 47 houses on the larger northern section of the overall site was the subject of a grant of permission on appeal by Bord Pleanála dated 2<sup>nd</sup> April 2015. This application provided for road access via Seamount Abbey. That application was strongly opposed at Council and BP level by the residents of this estate. We note that the decision made overruled the planning inspector's recommendation with respect to the use of the access recommendation. F18A/0357 is an application granted on appeal for minor alterations to F14A/0106. The residents nor their Management Company have not consented to the proposal to provide access via their estate. For legal reasons to be detailed later in this objection they seriously question the legal entitlement of the applicants to provide this access and carry out the development as proposed. They also will oppose use of their estate for road access by whether legal means are available.

A.3 The Site forms part of the upper section of a hill that rises from west to east to form a prominent and conspicuous high ground overlooking the town of Malahide with extensive vistas to the south and north east over the Malahide sea coastline. The eastern section rises steeply from Seamount Road and is adjoined to the immediate east by existing houses. The largest section of the site to the immediate west of the Council Reservoir also rises steeply from 36 m OD north east ward to c. 45 plus OD. The two apartment blocks are proposed at the highest levels on the site where they will have commanding views from this hill top location and be very visible from adjacent houses and the coastline. The site is adjoined to the south, east and north by mainly two storey housing on lower ground with a three storey apartment block in Oak Hall to the immediate East. The zoned open space lands to the north and north east are proposed to be developed as a public park by the Council.

A.4 The Jameson Orchard development at the end of Seamount Road approved by Bord Pleanála on appeal under Reg No F09A/0015 for 86 apartments and 73 houses is nearly 50 % completed . While the application proposed 4 and 5 storey apartment blocks the permission omitted 11 apartments by revising downward the height of some of the blocks and by recessing other units back. There is no precedent in Malahide outside The Marine Village for apartment buildings in excess of 4 storeys except for that permitted at the Orchard at between 4-4.5 storey.

#### **B. The Proposed Development.**

B.1 The proposal provides for 58 two storey houses, 8 maisonettes and 76 apartments in two six storey blocks. A new access road and junction to Seamount Road is proposed to run northward servicing 19 units and then westward above the reservoir to access the main section of the development. The second access to the development is proposed via Seamount Abbey. The entrance to the apartment underground parking with 92 spaces is on the southern side of the blocks close to the proposed access junction down into Seamount Abbey. The closest access route to Seamount Road for all but 19 units to the east side would be from Seamount Abbey. That is the traffic generation potential of 123 dwellings plus allied services and visitor movements all utilising this existing quiet cul de sac. We note also that access is proposed to a future Council Maintenance area just north of the reservoir. A possible future public car park may also be needed to access the new parkland and the public playground proposed by the applicants to the west side of the apartments. All of these elements may add to considerable traffic generation in the future and were not

**AN BORD PLEANÁLA**  
**06 JAN 2020**  
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06 JAN 2020

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referred to in the submitted TTA.

B.2 The apartment blocks are a split 5/6 storeys in profile. A considerable amount of excavation of the sloping ground at the top of the hill is required to facilitate the cut and minimum fill construction approach. The main roof to each block will be at a height of 61.5 ms od with the top of the roof shaft at 62.3 ms od. These blocks given the elevated nature and topography of the site will be visually very prominent from nearby houses and from views of the hill from east and south. At an estimated pavement level of 37ms od at the proposed entrance to Seamount Abbey the parapet level of the apartment blocks will be a considerable 24.3m higher over a relatively short distance. Because of the alignment of this connecting road the Apartments will form an obtrusive and over dominant vista as viewed from our clients current cul de sac.

### Main observations to proposed development.

#### 1. Access via Seamount Abbey

1.1 This is the main objection of the residents to the proposal. In the TTA report it is stated that 40% of overall traffic generated will use this access. This is an inaccurate and misleading statement given that this access is the closest to 123 of the dwellings (86 %) and it is also the shortest route to the junction with the R124. All of this traffic and associated delivery/service and visitor traffic will utilise the Seamount Abbey entrance. The existing road network of this estate was never designed for additional traffic never mind the significant loading now proposed. The current secluded and shelter housing environment will be severely impacted upon as a consequence, to the detriment of the residential amenities, convenience and safety of the estate's residents.

1.2 While An Bord Pleanála granted permission in 2015 under F 14A/0406 for 44 dwellings with sole access through Seamount Abbey the potential traffic generation of the current proposal that is reasonably predictable is of the order of 262% more than previously permitted. The width, alignment, and gradient of the estates roadways render them unsuitable and unsafe for this level of anticipated traffic. They were never designed to take additional traffic, nor did residents anticipate on purchase of their homes that a large new housing estate would in the future be accessed through their internal road network. We understand that the applicants originally proposed to use the new entrance as a single access only. In discussions with Fingal County Council the Transportation Department requested that two access roads be provided. It is our view that the eastern access arrangement is more than adequate to service the entire development of 142 dwellings which is not an excessive number of dwellings for one road to cater for.

1.3 The current land use zoning for this site is Re "provide for residential development and protect and improve residential amenity" The guiding vision for this zoning objective is "to ensure that any development in existing areas would have a minimum impact a on and enhance existing residential amenity. The unnecessary imposition of this development by way of an insensitive and unwarranted roadway connection via Seamount Abbey would materially contravene this objective. No balance has been sought or attained between the management and facilitating of new desirable housing and the protection of the residential amenities of this estate which will be seriously and adversely impacted upon by the



**AN BORD PLEANÁLA**

**06 JAN 2020**

proposed road connection and by other impacts relating to visual intrusion and to overall traffic increase on Seamount Road and the loading on the junction with the R 124. Both in principle and in detail the road connection should be deleted.

## **2. Legal status of Proposed Road and Services connection through Seamount Abbey**

2.1 The Applicants has no right to access or connect services through Seamount Abbey. For the reasons outlined below, the Applicants do not have legal rights to:

1. Carry out the proposed development
2. Access through Seamount Abbey
3. Connection to the foul and surface water drains and systems which are in private ownership and have been insured and maintained by Seamount Abbey Management Company Limited for at least 13 years
4. Use of the roads, footpaths and services in Seamount Abbey which are in private ownership and have been insured and maintained by Seamount Abbey Management Company Limited for at least 13 years

Seamount Abbey Management Company Limited is the management company established to manage Seamount Abbey.

In June 2014 the Daly McCabe partnership executed an unconditional transfer of the roads and services through Seamount Abbey, being the common area lands within Folio 171988F, ("the 2014 Transfer") in favour of the Seamount Abbey Management Company Limited. This Transfer was also executed by directors of Seamount Abbey Management Company Limited.

I have attached herewith a copy of the transfer. The area affected by the transfer is outlined in red on the attached map. There is no right of way or other easements reserved in favour of the Adjoining Premises.

On the 3rd July 2014 the National Asset Management Agency ("NAMA") appointed statutory receivers in respect of the lands now sought to be developed by The Applicants ("the Adjoining Premises").

The receivers dispute the effectiveness of the 2014 Transfer and have sought, in effect, to make the 2014 Transfer subject to a right of way for the benefit of the Adjoining Premises.

Seamount Abbey Management Company Limited has issued Circuit Court Proceedings bearing Record Number 2019/6283 ("the Proceedings") in which it seeks, inter alia, a declaration that the 2014 Transfer is valid and effective and an order that the Property Registration Authority register Seamount Abbey Management Company Limited as owner of Folio 171988F.

The Proceedings also set out that if, which is denied, the 2014 Transfer is not valid and effective, Folio 171988F in any event remains free of such right of way in favour of the Adjoining Premises where, inter alia:-



**06 JAN 2020**

(i) The original proposed use of the Adjoining Premises involved a development of significantly lower density and higher quality than that currently proposed for the Adjoining Premises ("the Current Proposed Use of the Adjoining Premises"); and/or

(ii) The Current Proposed Use of the Adjoining Premises involves an intensification of user such as to extinguish the said right of way.

This means, in effect, that the proposed new development cannot be accessed through the road/footways in Seamount Abbey or connected to the services (which are in private ownership and have been insured and maintained by Seamount Abbey Management Company Limited for at least 13 years) save with the consent of the Seamount Abbey Management Company Limited. Seamount Abbey Management Company Limited is not prepared to issue the necessary consents. Consequently, the Applicants does not have the necessary legal entitlements to access the development through Seamount Abbey or connect to its services as indicated in the above-mentioned application.

This constitutes, it is submitted, a valid and substantive reason for a refusal of permission in this case. The residents are also very concerned about public liability in respect of use of this private road network if permission is granted. Will they be personally liable for any accidents thereon?

### **3. Traffic generation and Impact on local road network**

#### **3.1 The TTA focussed on:**

- 1. The potential traffic generation of this and the Jameson Orchard development for 2022 assuming both proposals are constructed and also to the year 2037 using an assumed growth rate**
- 2. The capacity of the controlled junction of Seamount Road with the R124. No analysis of the suitability of the proposed use of the Seamount Abbey road network is given. We contend that the 40 % assignment of traffic from the proposal is a gross underestimate as 86% of proposed dwellings will use the nearest access point which is via Seamount Abbey. This does not take account of Council traffic movements to the proposed new public Park or possible new public car park in the future. (The proposed playground in this application may lead to a demand for public parking).**

**3.2 The traffic generated by the 123 new dwellings plus other potential traffic referred to is a massive level of traffic to inflict on what is a calm traffic environment situated within a cul de sac of only 26 houses. This estate was never designed to accommodate additional traffic to service development lands to the north. If it had, it would have had a different layout arrangement with wider roads, no blind bends and more gentle road gradients. The capacity of the estate roads to accommodate large delivery and emergency vehicles has not been assessed. There is also the real danger on roads of only 6ms in width that two cars parked on either side of the road will obstruct/block traffic which would be most critical in an emergency situation.**

**3.3 The report prepared by MTW Consulting Engineers dated the 17th December 2019 refers to inaccuracies in the TTA carried out. These relate to the capacity of the main road**



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06 JAN 2020

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junction to the R124 which based on 2 days of peak hour monitoring were found to be the subject of lengthy queuing of up to 9 cars. It was also observed at certain times that exit required 2 changes of lights and that on two occasions traffic backed up from the Hill did not permit any movement at all. The 2022 scenario of committed plus proposed development on Seamount Road is likely to result in a far higher Degree of Saturation % at the junction than calculated by the applicants. We refer to attached survey of traffic queuing at this junction over two days which differ from the TTA figures and to selected photographs of this queuing.

3.4 The TTA submitted makes little reference to the construction traffic that will be generated during the substantive excavation required in the development. This as noted in documentation will amount to c. 21000 cubic m<sup>2</sup> of sub soil (maybe even rock). This will generate a requirement for 6000 large dumper truck movements (arriving and departing) over what would be a relatively short period in the site development phase. This significant traffic generation is not assessed or quantified in the TTA. It is likely to adversely impinge on residential amenity and on traffic convenience and safety.

#### **4. Appropriateness of Housing Density Proposed.**

4.1 The proposed net density of housing proposed is 43 per ha based on a site area of 3.28ha. Allowing for the Irish Water wayleave gives a density of 47 per ha. This is the realistic density to recognise and one that is at the limit of range of 35-50 per ha recommended in the Sustainable Residential Guidelines 2009 for outer suburban sites such as this. When regard is taken of the areas moderate accessibility to public transport, to the character and density of adjacent houses, to road and junction capacity and to the elevated and prominent situation on a hill side it is difficult to justify a density of the level proposed. The applicants themselves argued for several reasons that a density in excess of 45 per ha would not meet the criteria of the specific Government Guidelines.

In terms of accessibility the Dart station is over 1.6kms away and a minimum of 25minutes walk which makes it of limited attraction to future residents. While 3 bus services serve the area with two going to the city centre, there is no bus corridor to the city. The nearest bus lane is at Clongriffin.

In peak hours bus journey times are long and are not dependable. The arterial road route to the city centre is extremely busy in peak hours with frequent travel times in excess of 90 minutes in either direction. The local road network between this area, the town centre and Swords is also heavily congested at these times. The capacity of the junction to the R124 is limited and will result in significant delays if there is a substantial increase in traffic generation of the order proposed. Adjacent housing is at considerably lower density. Adjacent primary schools are at full capacity and have lengthy waiting list.

- Principal at St Oliver Plunketts NS Malahide stated "We can take 112 Junior infants each year. We have been oversubscribed for the past eight years. With the new building in Jameson Orchard, Coill Dubh, Robswall, Ashwood Hall and Brookfield (all of which are in our catchment) we are expecting a huge increase in applications for 2020".



- Malahide Community School have 204 places for 2020. They received 293 applications, 89 children were waitlisted, 35 are Malahide residents.

The elevated nature and topography of the site also requires a less dense approach if residential and visual amenity are to be fully protected.

The above factors demonstrate in this instance that a housing density close to the upper recommended limit is not justified in planning terms. Our clients are not against a housing development per se, it is the proposal to access it through their road network. It is suggested that a reduction in the number of apartments by either 16 or 20 could be readily done without major revisions to the layout and overall design of the scheme. Based on the viable building area of 3.04 ha a reduction in 16 apartments would still give a housing density of 42 per ha which is the midpoint of the recommended density range and one that is appropriate and proportionate for this sensitive location. A reduction of a further 4 units to give a four-storey apartment block would still give a density of 40.5 per ha. In these site and location circumstances the suggested densities are sustainable, are on par with what the applicants adjudged suitable for the site and make efficient use of serviced zoned land which is the primary goal of the Residential Guidelines.

In relation to the unnecessary need for six storey apartment blocks on a prominent hillside location we have closely examined the Building Heights Guidelines 2018 and conclude that this building height is excessive and would be visually incongruous and also detrimental to residential amenity. The Guidelines state for suburban /edge locations such as this that development should include an effective mix of 2, 3, 4 storey development which integrates into the existing and historic neighbourhoods and 4 storey or more can be accommodated alongside existing larger buildings, trees and parkland, river/sea frontage or along wider streets. We contend that the suggested situations to accommodate 4 storey or more do not occur on this elevated site particularly given the decision to locate the apartment blocks on the highest point on this hill which will render them very prominent and out of place in views from middle to long range locations. We note that the Jameson Orchard apartment blocks were lowered in part from the original 5 storeys sought We request An Bord to review the appropriateness of the height of these blocks.

## 5. Visual Impact

5.1 We consider that the proposed development except for the excessively high apartment blocks is well designed and laid out. It will also assimilate with adjoining development and the overall visual landscape of this elevated area except for the apartment blocks which are two storeys too high. It is accepted that apartments are necessary to provide for a range of dwelling types and to achieve a sustainable density of development in an existing urban area. The bulk scale and height of the mainly six storey apartment blocks will be a conspicuous and visually intrusive feature of the locality due to the elevated nature and topography of the site.

5.2 The top part of the site is readily visible from a wide range of vantage points in Malahide. These include the coastline, the amenity lands at Robswalls to the east and the approach to the town from the south along the R124 and the link road to Portmarnock. The

**AN BORD PLEANÁLA**

**6 JAN 2020**

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site is designated a Highly Sensitive Landscape in the Development Plan and there are specific policies and objectives for new development in such areas which arguably have not been fully complied with. Malahide is a popular residential town that has a significant tourist role and attraction deriving from its character, the coastline and numerous open space and recreational resources. View southward from site towards Seamount Abbey demonstrates visibility and elevation of site.

5.3 The chosen viewpoints for the visual assessment carried out are too limited and are confined to mainly close adjoining areas where the proximity of proposed houses and existing landscape features will mitigate visual impact at these angles of viewing. It is notable that no assessment was made from the top end of Seamount Abbey (around house no's 16-21) where the tall apartment blocks will appear as incongruent and overbearing. Middle ground views from the north in Old Golf Links and Grove Road are also ignored and should also now be considered.

5.4 The siting of the apartment blocks at the top of the site is to maximise views particularly of the coastline. This will obviously be used as a main selling point. It will however be at the expense of visual amenity and the visual character of this sensitive landscape. The detrimental impact which has been under evaluated will be at a considerable loss to the wider community. We are of the opinion that the visual impact is significant and warrants a reappraisal by An Bord. As part of this reappraisal we request that the proposal be reduced to 4 storey as a more sensitive and proportionate strategy to reduce visual impact while still retaining a sound and sustainable density of development. While we note from the pre planning consultations with the applicant that 16 extra apartments were requested (one extra floor) the sensitivity and capacity of the site to cater for the extra scale and height may have been overlooked to some degree. There is still the opportunity to review this requested modification in the interest of visual and residential amenity.

5.5 Within the proposed estate the 12 semi- detached two storey houses will adversely impinged upon by the apartment blocks in terms of overbearing and visual impact. While at an average of 27.5ms from the blocks the top of the blocks at this short distance will loom over 23 ms from the ground floor of each house. We suggest that that this is a further reason to reduce the height of the blocks at this stage and provide for a more compatible and sensitive development.

## 6. Environmental Concerns

6.1 The residents of Seamount Abbey are aware that stone quarrying was once very extensive on this hillside and there are references on some OS maps to previous workings. In the absence of a in depth geological survey there is speculation that rock may be close to the surface in places. We note the site investigation carried out but request that a more thorough geophysical survey be made. If rock is found in the location of the apartment blocks, the massive excavation required may require blasting or mechanical extraction on a substantial scale. This over a short term would have adverse residential impacts in terms of noise, dust, ground tremors and potential damage to foundations of adjacent houses. Any underlying ground water may also be affected.

**AN BORD PLEANÁLA**

06 JAN 2020

LTR DATED \_\_\_\_\_ FROM \_\_\_\_\_

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**7. Public Open Space Provision.** It is stated that the proposal meets the minimum standards of the County Development Plan. A qualitative analysis of this provision reveals that it is marginal, very fragmented and of little utility and amenity value. Most of it is bisected by roadways which render it unacceptable as a contribution to the residential amenity of future residents.

#### **8. Material Contravention of the DP.**

8.1 The proposed road area that runs east to west immediately adjoining the northern boundary to the reservoir is located in an area zoned in the current County Development Plan OS "To preserve and provide for open space and recreation amenity." It is not zoned Re "to provide residential development and protect and improve residential amenity. Residential development is not permitted under the OS open space zoning objective. The vision for this zoning is "to provide recreational and amenity resources for urban and rural populations subject to strict development controls. Only community facilities and other recreation uses will be considered and encouraged by the Planning Authority".

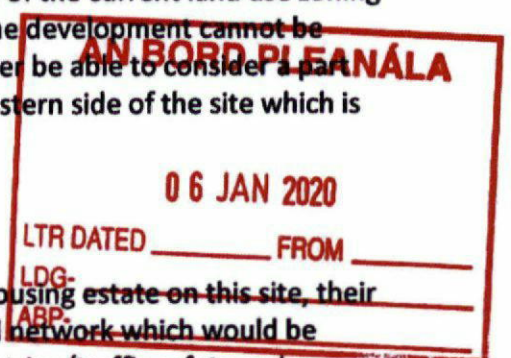
8.2 The proposed road section is to facilitate a large housing development. This area extends to a sizeable 0.106ha and is a critical link between the two proposed housing areas. In our view it is clearly not permitted under the current zoning and is a material contravention of the County Development Plan. We note the Material Contravention Statement submitted with this application in relation to the proposal to exceed the Core Housing Strategy and allocation for Malahide. Under the Planning & Development (Housing) and Residential Tenancies Act 2016 Bord Pleanála are permitted to materially contravene the Development plan in certain circumstances. This right in our opinion does not extend to a material contravention involving the zoning of land.

8.3 The proposed road section is an inherent and necessary part of the development. It however constitutes a significant and material contravention of the current land use zoning for the subject area. For sound planning and legal reasons, the development cannot be considered for approval in this instance. An Bord may however be able to consider a part grant of permission for the development proposed on the eastern side of the site which is not dependent on the subject road link.

#### **9. Conclusion.**

9.1 While our clients are not against the principle of a new housing estate on this site, their main objection is the proposal to access it through their road network which would be seriously injurious to their residential amenities and to pedestrian/traffic safety and convenience. The road connection is not necessary as the new eastern junction can satisfactorily accommodate the new development. The legality of this planning application and of the applicant's entitlement to access Seamount Abbey is undermined by contrary evidence submitted by our clients.

9.2 Other objections detailed relate to the capacity of the local road network to accommodate significant new development, to the density of the proposal which is





excessive in view of traffic and visual sensitivity including the height of the apartments blocks on top of a hill in a designated sensitive landscape, environmental concerns and finally an argument that the proposal is a material contravention of the current Development Plan. For these reasons' permission should be refused and the applicants should be requested to submit a revised SHD based on access only from the eastern junction with a reduction in housing density and the height of the apartment blocks.

Kind Regards,



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**Darragh O'Brien TD**  
**Spokesperson for Housing,**  
**Planning & Local Government**  
**Fianna Fáil**

<b>AN BORD PLEANÁLA</b>	
06 JAN 2020	
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