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**Planning and Development Acts 2000 to 2020**

**Planning Authority: Fingal County Council**

**Planning Register Reference Number: F20A/0089**

**APPEAL** by Laurence J. and Teresa Collins care of Future Analytics of 23 Fitzwilliam Square (South), Dublin against the decision made on the 8<sup>th</sup> day of June, 2020 by Fingal County Council to refuse permission for the proposed development.

**Proposed Development:** A two-storey style farmhouse, new wastewater treatment system and percolation area, new entrance walls and piers and all ancillary site development works at Killeen, Oldtown, County Dublin.

**Decision**

**GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.**

## **Matters Considered**

In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

## **Reasons and Considerations**

Having regard to the location of the site within An Area Under Strong Urban Influence as identified in the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005, to National Policy Objective 19 of the National Planning Framework (February, 2018) which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements, to the active engagement of the applicants in the running of a farm at this location, it is considered that the applicants have demonstrated a need to live in this rural area in accordance with National guidelines and policy and that the proposed development would not seriously injure the visual or residential amenities of the area. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

In deciding not to accept the Inspector's recommendation to refuse permission on the absence of a demonstrated rural housing need, the Board considered that the applicants who are actively engaged in the running of a farm at this location were fully in compliance with the rural need policies set out in National Guidelines and Policies. Furthermore, the Board considered that the proposed development was in accordance with the broader Objective RF26 of the Fingal Development Plan 2017-2023 which seeks to ensure the vitality and regeneration of rural communities by facilitating those with a genuine rural generated housing need to live within their rural community. The Board considered that Objectives RF36 and RF38 which reflect the requirement for there to be an existing dwelling on the farm were confusing in the context of other local and national policies. The Board considered therefore, that the proposed development at this location was acceptable and was in accordance with the proper planning and sustainable development of the area.

The Board noted that the planning authority in refusing the proposed development considered the proposed development would contravene materially the rural settlement strategy of the Fingal Development Plan 2017-2023 including Objectives RF36 and Objective RF38 and would be contrary to the Ministerial Guidelines and to the over-arching national policy in the National Planning Framework. In deciding to grant permission for the proposed development, the Board considered that the applicants had fully demonstrated an economic or social need to live in this rural area in accordance with Ministerial Guidelines and over-arching National Policy 19 of the National Planning Framework. The Board also considered that the applicants complied with the broader Objective RF26 of the Fingal County Development Plan 2017-2023 which seeks to ensure the vitality and regeneration of rural communities by facilitating those with a genuine rural generated housing need to live within their rural community. The Board noted that Objectives RF36 and RF38 of the Fingal County Development Plan 2017-2023 which both alluded to the requirement for there to be an existing dwelling on the farm in order to grant incremental houses were confusing in the context

of other general policies such as RF26 and National Guidelines and Policies. The Board concluded that the objectives in the development plan were not clearly stated and decided to grant permission on this basis in accordance with the provisions of Section 37(2)(b)(ii) of the Planning and Development Act, 2000, as amended.

## **Conditions**

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars received by An Bord Pleanála on the 6<sup>th</sup> day of July, 2020, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

**Reason:** In the interest of visual amenity.

4. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tile shall be the same as the colour of the roof.

**Reason:** In the interest of visual amenity.

5. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.

**Reason:** To ensure adequate servicing of the development, and to prevent pollution.

6. Surface water from the site shall not be permitted to drain onto the adjoining public road.

**Reason:** In the interest of traffic safety.

7. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 26<sup>th</sup> day of February, 2020, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

- (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.
- (e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the Environmental Protection Agency document.

**Reason:** In the interest of public health.

8. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the following:

(a) the establishment of a hedgerow along all boundaries of the site,  
and

(b) planting of trees at two-metre intervals along all boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason:** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

9. The proposed entrance and shared agricultural entrance shall be in accordance with the details provided on Drawing Number 588-P-002 submitted to the planning authority on the 26<sup>th</sup> day of February, 2020.

**Reason:** In the interest of traffic safety.



10. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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**Maria FitzGerald**

**Member of An Bord Pleanála  
duly authorised to authenticate  
the seal of the Board.**

**Dated this            day of            2020.**