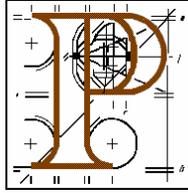


An Bord Pleanála



Inspector's Report

Development: Construction of part one and a half storey/part single storey dwelling, new site entrance, proprietary waste water treatment system, detached agricultural shed and associated site works at Lower Commons, Garristown, Co Dublin

Planning Application

Planning Authority: Fingal County Council
Planning Authority Ref.: F11A/0454
Applicant: Thomas Brangan
Type of Application: Permission
Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant: Thomas Brangan
Type of Appeal: 1st vs Refusal
Observers: None
Date of Site Inspection: 28 May 2012
Inspector: Juliet Ryan

1 THE SITE

- 1.1 The appeal site, with a stated area of 0.52 hectares, is located at Commons Lower, a rural townland some 2km north of Garristown. The site is located on the southern side of a narrow rural road that runs east from the Garristown to Ardcath Road.
- 1.2 The site forms part of a wider landholding (with an overall size of 2.7 ha). It is delineated by hedgerow and mature trees on its east, west, and northern (roadside) boundaries, with a gated agricultural entrance existing at the western side of the latter boundary. The southern boundary is open to the wider field at present.
- 1.3 The site is relatively flat but has a slight fall in a southerly direction from the road. At the time of the site inspection the site was tilled.
- 1.4 The rural road on which the subject site is located is narrow and substandard in terms of horizontal alignment. It is not possible for two cars to pass at one time. The area retains a strong rural character.

2 THE PROPOSED DEVELOPMENT

- 2.1 The proposal comprises a part one and a half storey part single storey detached dwelling and detached agricultural shed and associated works.
- 2.2 The dwelling has a floor area of 248 sq m and comprises a dormer dwelling with an attached single storey barrel roofed projection to the rear accommodating the kitchen and living area.
- 2.3 The dwelling is proposed to be finished in plain render and blue/black slate tile with a zinc finish to the barrel roof element.
- 2.4 A detached agricultural shed is proposed to the rear of the dwelling. This has a stated area of 71.4 sq m and reaches a height of 3.9 metres.
- 2.5 Access was proposed via the existing agricultural entrance (to be splayed and widened) in the application to the Planning Authority. The First Party appeal to the Board has proposed an alternative entrance location (20 m east of current entrance at centre of roadside boundary) to address the concerns of Fingal County Council's Transportation Department. This will be addressed further in the assessment section below.
- 2.6 2 no. soakaways (one for house and one for agricultural shed) are proposed

- 2.7 A proprietary wastewater treatment unit and percolation area are proposed. Results of on-site testing found T and P results of 60.86 and 43.36, respectively.

3 THE DEVELOPMENT PLAN

- 3.1 The statutory development plan in respect of the subject site in accordance with Pt II Chpt 1 S.(9)&(10) of the *Planning and Development Act, 2000* is the *Fingal Development Plan 2011-2017*.

- 3.2 The subject site is zoned 'RU' in the Development Plan as follows:

“Protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage.”

Under this zoning objective residential development is considered acceptable in principle subject to compliance with certain rural housing policies of the Development Plan.

- 3.3 Objective RH01 of the Plan seeks to facilitate those with a genuine rural generated housing need to live within their rural community.
- 3.4 Rural Generated Housing Need is set out on page 295 of the Plan, with Table RH02 setting out an eligibility summary (appended).
- 3.5 Objective RH12 relates to rural housing for applicants who are involved in the family farm in Fingal. Details in this regard are appended.
- 3.6 Objective RH15 provides for new rural dwellings on suitable sites where the applicant meets the requirements of Table RH03. The latter (appended) sets out detailed criteria including a requirement for various supporting documentation and evidence.
- 3.7 Objectives RH21-24 inclusive (appended) detail various site specific design and drainage requirements.

4 STRATEGIC POLICY

4.1 Sustainable Rural Housing Guidelines 2005

- 4.1.1 The Sustainable Rural Housing Guidelines 2005 set out implementation guidelines for Planning Authorities in respect of rural housing having regard the National Spatial Strategy's overall development framework.

4.1.2 The Guidelines advocate the identification of types of rural areas, such that clear Development Plan policies in respect of rural housing can be formulated. The subject site would be most akin to the '*Rural Areas under Strong Urban Influence*' type per Section 3.2 of the Guidelines. Appendix 3 of the Guidelines states that, in respect of rural areas designated as being under strong urban influence, policies should be formulated such that the housing requirements of the rural community are catered for, whilst urban generated development should be directed into zoned settlement areas of towns, cities and villages. Furthermore, the Guidelines advocate that clear criteria be included in the Development Plan in respect of how the Planning Authority will assess rural housing proposals.

5 PLANNING HISTORY

The following recent planning history pertains to the subject site:

F07A/1015

Permission refused to Thomas Brangan for a dormer bungalow and associated works at the subject site. Reasons for refusal related to rural housing need and water services. Details appended.

6 PLANNING AUTHORITY DECISION

5.1 Submissions / Observations

None

5.2 Internal Reports

5.2.1 The Water Services Report considered there to be insufficient information in relation to foul drainage, surface water drainage, and water supply.

6.2.2 Whilst noting that the proposal "constitutes undesirable ribbon development on a substandard rural road network", the Transportation Department had no objection to the proposal subject to condition, including *inter alia*, the relocation of the proposed site entrance 20 metres east.

6.3 Decision

The Planning Authority decided to refuse permission for two reasons, which may be summarised as follows:

- Reason 1** Non-compliance with rural housing policy and Objective RH12
- Reason 2** Insufficient information in respect of water drainage and services and therefore development would be injurious to public health

7 GROUNDS OF APPEAL

The appeal, which has been prepared by Conor English Architecture and Design on behalf of the First Party, appends various supporting documentation, including, *inter alia*, a separate submission in response to Reason No. 2 for refusal prepared by Enviropro Limited. A summary of the latter follows a summary of the substantive grounds of appeal as follows:

- Planning Authority have assessed subject proposal as being one relying on being a member of a farming family and actively involved in farming, whereas the applicant seeks to be assessed as a rural related business
- Subject proposal incorporates specialist angus-beef rearing business to supplement the applicant's existing craft butcher's business in Garristown
- Notwithstanding that application is being made as a rural related business, Applicant can also demonstrate compliance with Objective RH12
- Sets out applicant's long standing family ties with local area
- The family farm is run by the applicant's brother and straddles the Meath/Fingal border
- Applicant works on part-time basis during busy periods at brother's farm
- Brother's farm exceeds 15 ha and meets criteria as working farm
- No planning permission has been granted for housing development at the family farm since 1999
- At present the Applicant and his family reside with his in-laws in Garristown
- Applicant's wife was born and reared in local area
- Subject site has been in applicant's ownership since 2005

- Site has been used by applicant and his brother for grazing their own animals but has not been used for rearing angus beef due to the intensive feeding regime required for the latter (and consequent need for applicant to be resident at the site)
- Specialist finishing of 12-15 no. Angus heifers requires them to be fed 3-4 times per day which cannot be done remotely and therefore requires that the applicant reside on the same site as the cattle (supporting documentation in this regard appended)
- Applicant has close family ties in the area and was born and reared in the parish of Ardcaith, Co Meath. The subject site is also located in Ardcaith parish, albeit on the Fingal side of the border
- Development Plan does not stipulate that family home must be located in Fingal
- Issues raised in water services report could have been satisfactorily addressed by further information
- Notes that an increased polishing filter size can cater for a p.e. of 9 persons, but that this is not necessary given that the design of the internal office (no window, natural light, or ventilation) would make it unsuitable bedroom accommodation
- Shed and driveways have been relocated to achieve adequate separation distances and driveway has been relocated in an easterly direction to address Transportation Department's concerns
- Submit that Fingal's reasons for refusal are insubstantial and request that permission be granted

Specific Response to Water Services Issues:

- Soil polishing filter has been relocated a minimum of 10m from drainage ditch at eastern boundary
- A P.E. of 8 is appropriate but there is ample space for increased polishing filter area should Board consider P.E. of 9 appropriate
- Enclose certification for proposed WWTP and a copy of the Site Characterisation Report
- Provides design details in respect of manure pit
- Confirms details in respect of foul drainage

- Provides design details in respect of surface water drainage
- Provides details in respect of propose water supply

8 PLANNING AUTHORITY RESPONSE

The Planning Authority’s response, which is signed by the Senior Planner, may be summarised as follows:

- Notwithstanding that applicant has applied on basis of being a “bona-fide” applicant, the Planning Authority considers that the proposal essentially comprises a farm operation
- Objective RH12 of the Development Plan sets out the specific objectives for the provision of a rural house for a person actively involved in farming
- Based on the appeal documentation, the applicant has not demonstrated active involvement in the family farm
- All information in relation to farming pertains to Mr Derek Brangan, the applicant’s brother.
- Only a herd number, sought in September 2010, pertains specifically to the applicant
- Note that additional information in respect of water services has been submitted as part of appeal
- Having assessed appeal submission and original application, Planning Authority remains of opinion that applicant has not demonstrated compliance with the Rural Housing Policy
- Requests Board to uphold Planning Authority decision

9 ASSESSMENT

9.1 I would consider the main issues arising in the instant appeal are as follows:

- Accordance with Rural Housing Policy
- Design and Layout
- Access and Road Safety
- Impact on Ground and Surface Water

9.2 Accordance with Rural Housing Policy

9.2.1 The site is located in an unserviced rural area that is designated as being under strong urban influence per the Development Plan. Accordingly, I would consider that there should be a presumption against development at the site save for in instances where it can be demonstrated that the applicant accords with the Planning Authority's rural housing policy.

9.2.2 Section 8.3 (page 295) of the Development Plan (appended) sets out its rural settlement strategy and delineates five categories under the heading 'rural generated housing need'. In this regard, the applicant submits that he seeks to be assessed as a rural related business and not as a member of a farming family (by which the Planning Authority assessed the application). Notwithstanding this, the Applicant also submits that if the Board decides to assess the application by reference to active involvement with the family farm that he would qualify under this category also. In response, the Planning Authority states that it considers the proposal to comprise, essentially, a farming operation, and that the applicant has failed to satisfy the Development Plan's rural housing policy requirements in this regard.

9.2.3 I consider the crux of the subject appeal relates to whether the proposal would come within any of the scenarios outlined by the Development Plan's rural housing policy. In this regard, whilst I appreciate that such policy is complex by its nature, I consider the Development Plan's rural housing policy to be unfortunately prolix in places. Nonetheless, by reference to the instant case, I consider it can be distilled as follows:

- To qualify as an active member in the family farm, the applicant must accord with bullet point one on p.295 and the provisions of Objective RH12
- To qualify as a rural-related business the applicant must accord with bullet point five on p.295 and the provisions of Table RH03

9.2.4 By reference to qualification as an active member in the family farm, the first bullet point on page 295 stipulates that the family farm be situated in Fingal. In this regard, the Board is referred to drawing no.C11-07-104, which illustrates the farm lands, and to the letter from Mr Derek Brangan, the First Party's brother, outlining its extent and length of time in the family. In this regard I am satisfied that the family farm is a long running operation in the local area. I would note, however, that the bulk of the farm (i.e. 148 acres) is located in Meath; not Fingal. Further, I would note that the subject site and its associated landholding (7 acres in total) are the only part of the farm located in Fingal. Whilst I accept that administrative borders are relatively academic in terms of local rural communities and should not therefore be accorded undue weight, I would nonetheless be of

the opinion that the subject site and its associated landholding would not appear to be an integral part of the overall farm.

- 9.2.5 I would concur with the Planning Authority's comment that all supporting documentation pertaining to the family farm refers to the First Party's brother. The only specific documentation relating to the First Party is a herd number, which was applied for in September 2010. I would also note that the stated extent of the applicant's involvement in the family farm is to help out during the busy lambing season. In this regard I note that while the family farm's stated primary focus is organic lamb production; and whilst the First Party has enclosed a herd number; the subject site was tilled at the time of inspection. Further, Per Section 9 of the sworn Affidavit accompanying the application, the First Party is not claiming to be actively running the family farm.
- 9.2.6 Having regard to the above, and to the specific requirements of Objective RH12 (appended), I am not satisfied that the applicant has demonstrated compliance with Development Plan policy regarding rural housing need by reference to active involvement in the family farm.
- 9.2.7 The First Party's stated preference is to be assessed as a rural related business. In this regard, bullet point five on P.295 states that:

“The Applicant must have a clearly demonstrated need to live in the rural area to ensure the functioning of the business.”

The First Party submits that the specialist nature of the proposed rearing of angus beef means that he must reside on the same site as the heifers. Supporting documentation is appended in this regard, which confirms that to achieve the quality of meat required that the heifers must be fed a strict diet 3-4 times daily. Whilst these points are reasonably made, I would note that the First Party currently operates a butchers in nearby Garristown (the angus beef is intended for sale in same). As such, it would be expected that he would be working in Garristown for a significant portion of the time. It is therefore difficult to reconcile his need to dwell at the same site as the heifers, particularly given the proximity of the subject site to the village (c.2km). As such, I would tend to agree with the Planning Authority, that the nature of the rural business is one of livestock farming. Objective RH12 requires that, *inter alia*, applicants relying on the farming category of qualification must have a minimum farm size of 15 hectares. As such, the proposal would not qualify on size grounds.

- 9.2.8 In respect of meeting the requirements of Table RH03, then, I am not satisfied that the proposed rearing of angus heifers comprises a full-time business, nor do I consider that the applicant has demonstrated

that the dwelling is an essential part of the angus beef rearing operation. I would further note that the applicant has not submitted a professionally-prepared business plan as required by subsection (iv) of Table RH03.

9.2.9 The Board is directed to Section 8 of the Affidavit submitted with the application documentation. This ticks both categories “*rural family*” and “*employed in occupation essential to the rural community and/or economy*”. As set out above, I am not satisfied that the proposed dwelling is necessary for the occupation/local business category. However, I would consider that the Applicant has demonstrated close family ties with the area. In this regard the Board is referred to Table RH03 subsection (i). The application documentation confirms that the applicant grew up in the area (lived in Ardcath for 20 years), and provides various other evidence of longstanding ties with the local community. However, no documentary evidence has been supplied to confirm that no other member of the family has received planning permission based on close family ties since 1999. The application cover letter refers to the applicant’s siblings living ‘either on or adjacent to’ the family farm, but does not specify whether this arises from planning permissions since 1999 or not. In this regard I would consider the onus to be on the applicant to demonstrate that he meets these requirements.

9.2.10 I note that bullet point 2 on page 295 makes specific reference to close family ties with the “Fingal rural community”. On balance, I would consider flexibility would be reasonable when considering such matters in areas close to administrative boundaries, and note that Table RH03 does not specify that local connections must only be within Fingal.

9.2.11 Arising from the above, I would not consider that the applicant has demonstrated a local rural housing need in accordance with Section 8.3 of the Development Plan.

9.3 Design and Layout

The part 1.5 part single storey dwelling is well considered in terms of design, and it is to be welcomed that the restrained palette will be unobtrusive in the local rural area. Save for to facilitate the proposed access, no existing boundary planting is to be removed. I am satisfied that the proposal is acceptable on design grounds.

9.4 Access and Road Safety

9.4.1 Access to the subject site was originally proposed via the existing agricultural access (to be upgraded). The Transportation Department

report expressed concerns regarding sightlines in this regard, and recommended that the entrance be relocated 20 metres to the east. The Board is referred to drawing C11-07-100A, which was submitted with the appeal. This illustrates changes made to respond to inter-departmental reports. It shows the relocated entrance and replacement hedgerow in the place of the old entrance. Sightlines of 93 metres and 145 metres to the east and west of the entrance, respectively, are illustrated. Given that the Transportation Department stated that it had no objection to the proposal subject to condition, I am satisfied that the proposal is acceptable in terms of access and road safety.

9.5 Impact on Ground and Surface Water

- 9.5.1 The local area is unserved in terms of wastewater treatment, thus necessitating the use of an individual effluent treatment system on the subject site. The Applicant included a trial hole and percolation test with the application documentation. The latter produced average T and P values of 60.86 and 43.36, respectively. These are within the range considered suitable for a secondary treatment system per the EPA's *Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses* (2009). I am further satisfied that there were no indicators of poor percolation or substandard drainage conditions upon site inspection.
- 9.5.2 I am satisfied that a P.E. of 8 no. occupants is appropriate in the instant case given that the downstairs office would not constitute appropriate bedroom accommodation. In this regard, I am satisfied that a 450 sq m area for the polishing filter is appropriate.
- 9.5.3 The Board is referred to the Enviropro Ltd's section of the appeal submission. This addresses the various deficiencies in information highlighted in the Planning Authority's Water Services report. It provides, *inter alia*, drainage details in relation to the manure pit and cattle shed and confirms compliance with the EPA Code of Practice, 2009. In addition, the site layout has been revised to achieve appropriate separation distances from ditches. The Planning Authority have not availed of the opportunity to comment on this aspect of the appeal submission. On balance, and given the detailed information submitted with the appeal, I would not consider lack of information pertaining to drainage to be a reasonable ground for refusal.

10 CONCLUSION AND RECOMMENDATION

10.1 Conclusion

I have had regard to all other matters raised in the instant case, but do not consider them to be so material to the consideration of the merits of this proposal as to warrant a different conclusion from that set out below.

10.2 Recommendation

I have read the submissions on file and visited the site and surrounding area, and had due regard to the provisions of the Development Plan, the *Sustainable Rural Housing Guidelines for Planning Authorities*, the EPA's *Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses* and all matters arising. Following from this I conclude that planning permission should be refused for the reasons set out below.

REASONS

1. The site is located in a rural area outside any designated settlement and in a Rural Area Under Strong Urban Influence, as defined in the National Spatial Strategy (2002) and the Fingal County Development Plan 2011-2017 where development that is not rurally generated should be more properly located in designated settlement centres. It is the policy of the Fingal County Development Plan to restrict housing in such areas to those who can demonstrate a rural generated housing need, as outlined in Section 8.3 of the Development Plan. This policy is considered reasonable. The Board is not satisfied, based on the information submitted with the application and the appeal, that the applicant has demonstrated compliance with the Development Plan's rural housing policy. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Juliet Ryan
Inspector

7 June 2012