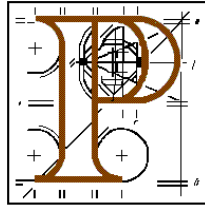


# An Bord Pleanála



## Inspector's Report

**PL 06F.245826**

**DEVELOPMENT:** Permission is sought for a Dormer Bungalow dwelling with wastewater treatment system and all associated siteworks.

**LOCATION:** Flemington, Balbriggan, Co. Dublin.

### PLANNING APPLICATION

**Planning Authority:** Fingal County Council.

**Planning Authority Reg. No:** F15A/0326

**Applicant:** Aidan McAvinue

**Application Type:** Permission

**Planning Authority Decision:** Refuse

### APPEAL

**Appellant:** Aidan McAvinue

**Type of Appeal:** First Party

**Observers:** None

**DATE OF SITE INSPECTION:** 27 January 2016

**INSPECTOR:** Patricia Calleary

## 1.0 SITE AND DEVELOPMENT DETAILS

### Site Location and Description

- 1.1 The appeal site is located in a rural area in North County Dublin, along a local road (L1130) known as Flemington road. It has a stated area of 0.43 hectares. It lies c.1.3 km east of the M1 motorway and c.3.2 km north west of Balbriggan. The site is flat, well screened and of similar topographical elevation to that of the public road.
- 1.2 The site is situated directly to the rear (East) and within the same land holding as 2 established dwelling houses. One of these houses, the existing family home, is a semi-detached single storey narrow form cottage with a sizeable single storey extension to its rear. The other detached house is marked on the drawings as '*existing dwelling-uncle*'. In the rural setting, this existing family home and its adjoining semi-detached house are both located close to the edge of the public road.
- 1.3 The public road is 6m in width and is without any footpaths or road markings. The driveway proposed to serve the new dwellinghouse runs along the gable of the family home for part and is c. 4m in width.
- 1.4 There is a separate grassed access laneway immediately south of this site, i.e. south of applicant's uncle's house and this laneway serves agricultural lands and abuts the subject appeal site for part.
- 1.5 In the wider context, the site is located in a semi-rural area. There are individual houses proximate to the site, most notably located along a local road which runs perpendicular to Flemington road and connects to a rural village, Balscadden, c. 400 m eastwards.

### Description of Proposed Development

- 1.6 Permission is sought to construct a 3 bedroom dormer bungalow intended to be served by an on-site effluent treatment unit and associated site works. The house, with a N-S orientation, is a 'generic' design, consisting of a hipped roof dormer style. The house is laid out with 3 bedrooms and has a stated floor area of c. 227 sq.m and an overall ridge height of c.7m. 3 no. projecting dormer windows are proposed on the front roof elevation. It is proposed to be inserted to the rear of the family home and uncle's house, on a site across the rear garden associated with the family home.
- 1.7 An on-site wastewater treatment unit and sand polishing filter is proposed for the treatment of wastewater. A site characterisation assessment report and details accompany the application.
- 1.8 The surface water is proposed to be disposed via soakway infiltration trenches and details are presented with the application.
- 1.9 A mains water supply from Irish Water is proposed to serve the house.

1.10 Vehicular access to the proposed new dwellinghouse is intended to be through the existing driveway of the established family home, at a point where there is a curved road alignment. A letter of consent to provide a right of way over the driveway / access to the proposed dwelling from the applicant's parents is on file. 3 No. letters of consent for the carrying out of setback of roadside boundaries to improve sightlines were also received by the Planning Authority on that date. These appear to be from the applicant's uncle and from the house which directly adjoins the applicant's parents semi-detached home.

## **2.0 PLANNING AUTHORITY DECISION**

2.1 The Planning Authority made a decision to **REFUSE** Planning Permission on 9 November 2015 based on one reason as follows:

- 1. The proposed vehicular entrance has restricted sightlines in a northerly direction and the proposed development would therefore endanger public safety by reason of traffic hazard. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.*

## **3.0 PLANNING APPLICATION**

3.1 The application was submitted to the planning authority on 10 July 2015. On 2 September 2015, a request for further information was sought. A response to this request was received by the Planning Authority on 14 October 2015.

### **3.2 Planning Officers Report**

The planning officer's report can be summarised as follows:

- Describes the location as one which is predominately residential, adjoining but not within Balscaddan Rural Village (RV).
- Sets out the relevant planning policy of the Fingal Development Plan 2011-2017 including the zoning (GB) '*to protect and provide for a greenbelt*', the rural settlement strategy and design guidance for rural housing.
- Considered the proposal as being acceptable in terms of visual amenity of the area.
- Considers the information submitted including the supplementary application form is in compliance with Objective RH-15-Table RH-03(i) in which he stated his application is made under 'close family ties'.
- Water layout submitted and car parking provision considered acceptable.
- In relation to sightlines, the Planning Officer noted the applicant's indication that a sightline of 70 m to the North and 90 m to the South were achievable, which was less than required under design standards.
- The intensification of the existing access was not recommended.

- The Planning Officer recommended permission be **REFUSED** on the grounds of the proposal generating a traffic hazard.

### 3.3 Departmental Reports (following assessment of further information)

#### Transportation Planning Section

- Notes that the posted speed limit is 80 km/hr and the NRA standards for such a speed limit are 145m in both directions.
- NRA standards are used as a starting point for assessment of required sightlines.
- Considers the achievement of 70m and 90m are inadequate above a 50km/hr speed limit.
- The intention to set back the boundaries of adjacent properties to improve visibility was noted but considered this would not result in the required visibility in the northern direction.
- Intensification of the existing access was not recommended.
- A recommendation for **refusal** on the grounds of traffic hazard is made.

#### Planning and Strategic Infrastructure Department

- No Objection.
- Recommends a **grant** of permission subject to 4 no. standard conditions.

### 3.4 Prescribed Bodies

The Planning Authority received a submission from Irish Water which raised no objection to the proposed development.

### 3.5 Third Party Submissions

No third party objections were received on the subject application.

## 4.0 PLANNING HISTORY

4.1 There is no planning history associated with this appeal site.

## 5.0 PLANNING POLICY

### **National Guidelines**

5.1 The National Spatial Strategy (NSS) and the **Sustainable Rural Housing Guidelines 2005** distinguish between rural generated housing and urban generated housing and seek to ensure that the needs of rural communities are identified in the development plan process. The guidelines make clear that in all cases, consideration of individual sites will be subject to satisfying normal planning considerations relating to siting and design, including

vehicular access, drainage, integration with the physical surroundings and compliance with the objectives of the development plan.

- 5.2 The **EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses**, 2009 applies.

### **Local Planning Policy**

- 5.3 The appeal site is governed by the policies and objectives contained within the *Fingal Development Plan, 2011-2017*. Within this plan, the site is zoned 'GB' which seeks *'to protect and provide for a greenbelt'*. The houses to the front (West) of the subject site, including the family home are zoned 'RV' (Rural Village).
- 5.4 Within an area zoned 'GB', proposed residential development is required to demonstrate compliance with the Rural Settlement Strategy of the Fingal Plan.
- 5.5 Objectives, **RH04**, **RH06**, **RH15** and **Table RH03** are relevant.

#### **Objective RH04:**

*'Provide that the maximum number of dwellings permitted under any of the rural zonings will be less any additional house which has been granted planning permission to a family member since 19 October 1999'.*

#### **Objective RH06:**

*'Permit a maximum number of one incremental house for those who meet the relevant criteria set out in this chapter within areas with the zoning objective HA or GB plus one house for a person with exceptional health circumstances'.*

#### **Objective RH15**

*'Permit new rural dwellings in areas which have zoning objectives RU, or GB, on suitable sites where the applicant meets the criteria set out in Table RH03'.*

**Table RH03** sets out the eligibility criteria for applicants from the rural community for new rural housing.

RH03 (i) includes a criteria for:

*'One member of a rural family who is considered to have a need to reside close to their family home by reason of close family ties, and where a new rural dwelling has not already been granted planning permission to a family member by reason of close family ties since 19th October 1999'. The applicant for planning permission for a house on the basis of close family ties shall be required to provide documentary evidence that:*

- *S/he is a close member of the family of the owners of the family home*
- *S/he has lived in the family home identified on the application or within the locality of the family home for at least fifteen years*

## **Road Safety**

### **5.6 Objective T052:**

*'Ensure new developments in rural areas are located so as to avoid endangering public safety by way of a traffic hazard'.*

## **Wastewater**

### **5.7 Objective WQ06**

*'Minimise the impact on surface water of discharges from septic tanks, proprietary effluent treatment systems and percolation areas by ensuring that they are located and constructed in accordance with the recommendations and guidelines of the EPA and Fingal County Council'.*

### **Objective RH24**

*'Ensure that the requirements set out for on-site treatment systems are strictly complied with, or with the requirements as may be amended by future national legislation, guidance, or Codes of Practice'.*

## **Design and Siting**

### **5.8 Objective RH16**

*'Ensure that new dwellings in the rural area are sensitively sited, demonstrate consistency with the immediate Landscape Character Type, and make best use of the natural landscape for a sustainable, carbon efficient and sensitive design. A full analysis/feasibility study of the proposed site and of the impact of the proposed house on the surrounding landscape will be required in support of applications for planning permission'.*

### **Objective RH17**

*'Ensure that the design for any new house conforms to the principles of proposed Design Guidelines for Rural Development. These Guidelines will be published by the Council within the period of this Development Plan. In the interim, proposed development should conform to the design criteria in the Interim Siting and Design Guidance for Rural Houses set out in Appendix 5'.*

## **6.0 GROUNDS OF APPEAL**

### **6.1 First Party Appeal**

A first party appeal was submitted on behalf of the applicant/appellant by Frank Burke and Associates. The grounds of the appeal may be summarised as follows:

- Sets out that the applicant is a long term resident of the area and his uncle lives adjacent to the subject site.
- The proposal is to erect a second dwelling on an existing site using an existing domestic entrance. Sightlines are restricted by physical constraints (location on a bend, narrow hard shoulder and existing

walls and fences). Sightlines of 70m (North) and 90m (South) are achievable.

- Proposed to utilise the entrance but set back the fence line with consent of the 3 houses proximate to the site (2 semi-detached houses to the North and applicant's uncle's house to the south).
- Considers 90m sightline is normally accepted by Local Authorities for Local Authorities on County roads, 2 steps down from NRA -Design Manual for Roads and Bridges (NRA-DMRB). Accepts that this is not achievable so location chosen where maximum sightlines are achievable.
- Entrance sightlines meets a design speed of 70km/hr to the north and 85km/hr to the South at 2 steps down (NRA DMRB).
- The stopping sight distance (SSD) on the approaches on the county road meet standards required for a design speed of 85km/hr at 2-steps down (NRA DMRB).
- Considers that the operational speed limit of the road would be less than 80km/hr in reality because of alignment, surface and width of road.
- Considers that DMRB is not appropriate for county roads.
- Traffic volumes on the road would be considered 'low' and states that the addition of one dwelling will have minimal effect on the capacity or current level of experience by users of the county road.
- Refers to an objective in the development plan in respect of Stamullen Village to '*advance the possible upgrading of M1 Junction 7 to improve capacity*' and considers that if this objective is realised, the volume of traffic on Flemington road would reduce significantly.
- Emphasises that the proposal to set back the fence line would improve forward visibility for traffic on the receiving road in addition to the improvement of sightlines at the exit from the 3 existing properties.
- Development would not endanger public safety by reason of a traffic hazard and that the setbacks would improve safety for road users.
- Refers to the Sustainable Rural Housing guidelines and considers that the Planning and Transportation sections of Fingal Co Council did not take a balanced approach as is required under the Section 28 Guidelines.

## **6.2 Planning Authority Response to Grounds of Appeal**

None

## **6.3 Observers**

None

## **7.0 ASSESSMENT**

7.1 I have examined the documents on file, inspected the site and environs and considered relevant local and national planning policy. The following assessment covers the points made in the appeal submission and also encapsulates my *de novo* consideration of the application. I consider that the key issues in the assessment of the merits of this appeal case are as follows:

- 1. Principle of the Development including Rural Housing Policy**
- 2. Traffic and Road Access**
- 3. Siting and Design**
- 4. Surface and Waste Water Treatment**
- 5. Other Matters**

I will deal with these issues as set out under the respective headings.

### **7.2 Principle of the Development including Rural Housing Policy**

I have had regard to the supplementary application form and correspondence submitted by the applicant to support their qualifying criteria of the Development Plan's rural housing policy. The applicant claims that he is applying for a dwellinghouse under 'close family ties' in accordance with Objective RH06 and Table RH-03 (i) of the Fingal County Development Plan. The applicant has provided evidence that he is a son of the family who occupy the family home and that he has lived in the family home for 30 years. In the supplementary form, he has confirmed that no other family member ever received planning permission for as rural dwelling in Fingal County.

In areas with the GB zoning objective, only one incremental house will be permitted but, where exceptional health circumstances are demonstrated, an additional house will be considered. Under Objective RH04, the maximum number of dwellings permitted under GB zoning will be less any additional house which has been granted planning permission since 19th October 1999.

I note that a second single storey house exists adjacent to the family home on the family lands, marked as the applicant's uncle's house on the site layout plan. This red brick house has been effectively built on what appears to be part of the original family home site. It has a separate entrance proximate to the family home entrance. I am unaware of when the house was built but based on the design expression, I expect it was sometime in the 1970s-1980s time-period. I note that there are no details of the house or any planning permission reference on the Planning Authority's planning register. I conclude that, based on my judgement on the ground, this house was likely constructed prior to October 1999 in any case. Therefore, I am of the view that it cannot be considered as an 'incremental' house or included as such when assessing the development against Objectives RH04, RH06 and Table RHO3.

I consider that the applicant has demonstrated a genuine rural-generated housing need based on the information submitted with the planning application and has met with Objective RH06 and the criteria set out in Table



RH-03 (i) of the Fingal County Development Plan. Accordingly, I conclude that the in principle, the development as one incremental house can be accommodated on the subject site.

### 7.3 Traffic and Road Access

The issues of road safety and traffic hazard are the main planning considerations which arise in this appeal and together constitute the reason for the refusal decision issued by the Planning Authority.

Objective RC07 of the Fingal Development Plan supports the sharing of access points or use of existing entrances for access in the situation of a rural cluster. This application proposes to share an entrance but in my view, the development response is that of inserting a house in a rear garden as a backland development, rather than developing or adding to form a planned cluster of houses.

Objective TO52 of the Fingal Plan sets to ensure that development in rural areas are located so as to avoid endangering public safety by way of a traffic hazard'.

It is clear from a site inspection that the required sight lines are very restricted. The existing driveway serves the family home and its intensification would serve to increase the conflict between vehicles exiting the site and those travelling along Flemington road. There are no pedestrian footpaths, road markings or verge along this stretch of public road. The carriageway is narrow with a poor road surface and the road alignment in the general vicinity is poor.

I share the view expressed by the Transportation department which considered the achievement of 70m and 90m are inadequate above a 50km/hr speed limit. I observed the road to be well trafficked on the day on my inspection and traffic was moving at speeds up to the posted speed limit of 80 km/hr.

I do not agree with the appellant's arguments that the setback of the walls at this location would improve road safety and there is little space to set back the walls as the 2 semi-detached houses are already located very close to the public road. The setback which could be achieved would provide minimal impact and cannot address the curved alignment of the public road itself. While it is accepted that there is an existing entrance on the site, it is extremely narrow and for part, runs directly along the gable of the existing home. The addition of a second house would intensify the use of this access and increase the vehicular traffic exiting onto the public road at a point where it is not safe to do so. This would be even more difficult at night time where there is no public road lighting. I observed from my site visit that turning movements in and out of the access were extremely difficult given the speed of traffic and the restricted visibility exiting directly to the curved road alignment.

I do not agree with the arguments made by the appellants that the addition of traffic associated with a dwelling will have virtually no effect on the capacity or the current level of service experienced by users of the county road. On the contrary, this would set an undesirable precedent of disorderly and unsafe development. The existing access is well below current standards and to allow an intensification of this by permitting an additional dwelling would be contrary to national and local road safety policy and standards.

Given the restricted sightlines achievable, particularly in the northern direction, I consider the house should not be permitted on this issue alone. The proposed development would be inconsistent with Objective TO52 and would endanger public safety by reason of a traffic hazard and obstruction to road users.

#### 7.4 **Siting and Design**

The current Development plan requires a high level of siting and design for housing in the countryside. New dwellinghouses should take into account the nature and the scale and form and layout of existing or adjoining dwelling houses, where appropriate. Design and materials should reflect those of the County's rural built heritage.

Objective RH16 of the Fingal Development Plan requires a full analysis/feasibility study of the proposed site and of the impact of the proposed house on the surrounding landscape. A single page design statement was submitted with the application but it is considered to be generic and lacking in detail as it does not include an analysis of the impacts on the landscape.

The selection of materials and their detailing, are not sensitive to the proposed rural location. The deep form, hipped roof, mock georgian panel window design and 3 projecting roof windows are not in-keeping with the simple form of the family home with its uninterrupted gable roof. It is therefore considered that the design is not in compliance with the objectives or the interim Siting and Design Guidance for Rural Houses set out in the Fingal Development Plan and would if permitted reduce the visual amenity of the area, notwithstanding that it would not be visible from the public road. Accordingly, the development, if permitted, would contravene Objectives RH16 and RH17 of the Fingal County Development Plan.

**Note:** Having regard to the substantive reason for refusal set out below which accords with the decision of the Planning Authority, the Board may not wish to pursue the matter of siting and design in this instance.

#### 7.5 **Wastewater and surface water Treatment**

A site characterisation assessment report in accordance with 'EPA Code of Practice for Wastewater treatment and disposal systems serving single dwellings – October 2009', (COP), and details accompany the application.

The category of Aquifer is identified as locally important (Lm) with a vulnerability classification of 'Moderate', representing a GWPR response of R1 under the EPA COP 2009. According to the desk study and the response matrix, single house systems are acceptable in such areas subject to normal good practice.

The trial hole assessment submitted encountered groundwater at a depth of 1.30m below ground level when tested in May and mottling was evident at 1.2m BGL, indicating that 1.2m may be the location of the winter water table. The trial hole was excavated to a depth of 2.05m below ground level (BGL) and bedrock was not encountered. The trial hole displayed very satisfactory topsoil to 0.4 BGL and this is underlain by silts and clay.

The site characterisation recorded a T-test value of 66, indicating poor sub-soil percolation characteristics. A P-test value of 40 was recorded, indicating good percolation characteristics of the topsoil which was deemed suitable for use as a polishing filter as per EPA COP 2009. A packaged wastewater treatment system and polishing filter is recommended.

A 6 PE Effluent Treatment System, together with a SAND polishing filter is proposed to serve the 3 bedroom house. The proposed development complies with the minimum separation distances to other features set out at Table 6.1 of the COP.

On the basis of information submitted, I am satisfied that the effluent generated from the dwellinghouse can be adequately drained and that no significant risk of ground or surface water pollution would exist. I consider that Objectives WQ06 and RH24 of the Fingal County Development plan can be satisfied.

A soakway design and details of the soakway infiltration trenches are presented with the application. A soil infiltration test was carried out in accordance with BRE Digest 365 and the SUDS Manual C697. I am also satisfied that the run-off from impermeable areas can also be satisfactorily accommodated on site.

## 7.6 Other Matters

The site is located c.3.5 km south of the nearest Natura 2000 site, the River Nanny Estuary and Shore SPA (Site Code 004158).

There are no hydrological, hydro-geological or other pathways linking the site and these designated European Sites. Furthermore based on the information presented I am satisfied that the wastewater generated from the proposal can be appropriately treated prior to reaching water bodies.

Having regard to the nature and scale of the proposed development and to the nature of the receiving environment away from Natura 2000 sites or any pathways between the site and Natura 2000 sites, I am of the opinion that no **appropriate assessment** issues arise. It is not considered that the proposed

development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## 8.0 CONCLUSIONS AND RECOMMENDATION

I recommend that the proposed development be **refused** permission for the reasons and considerations hereunder.

### REASONS AND CONSIDERATIONS

1. Having regard to the restricted visibility for vehicles exiting onto the public road, it is considered that the additional traffic movements generated by the proposed development would endanger public safety by reason of a traffic hazard and obstruction to road users. The proposal would contravene Objective TO52 of the Fingal County development plan, which seeks to ensure that new developments in rural areas are located so as to avoid endangering public safety by way of a traffic hazard. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Patricia Calleary  
**Senior Planning Inspector**  
09 February 2016