



An
Bord
Pleanála

Inspector's Report

PL06F.247265

Development	House, wastewater treatment system, percolation area and all associated site works, accessed via a private entrance road.
Location	Collinstown, Lusk, Co. Dublin.
Planning Authority	Fingal County Council.
Planning Authority Reg. Ref.	F16A/0295
Applicant(s)	Samantha Doyle
Type of Application	Planning Permission.
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Samantha Doyle
Observer(s)	None.
Date of Site Inspection	25/11/2016.
Inspector	L. W. Howard

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
3.1. Decision	4
3.2. Planning Authority Reports	4
3.3. Prescribed Bodies	6
3.4. Third Party Observations	6
4.0 Planning History.....	6
5.0 Policy Context.....	7
5.1. Development Plan.....	7
5.2. Natural Heritage Designations	8
6.0 The Appeal	9
6.1. Grounds of Appeal	9
6.2. Planning Authority Response	11
6.3. Observations.....	13
6.4. Further Responses.....	13
7.0 Assessment.....	13
8.0 Recommendation.....	18
9.0 Reasons and Considerations.....	18

1.0 Site Location and Description

- 1.1. The stated c.0.72ha application site is located within a rural area some 1.5km north of Lusk, County Fingal, and approximately 200m to the west and across the R127 from the Greatcommon Rural Cluster.
- 1.2. The primary land use locally may be described as agricultural. The application site is rectangular in shape and comprises part of an existing agricultural field. The site frontage is c.57m, with a depth of c.122m.
- 1.3. There is an earthwork enclosure recorded proximate the application site – RPS No.307 and Monument No. DU008-002. This is not visible at ground level .
- 1.4. Vehicular access is via a private access road constructed of gravel which opens onto the L52651 local tertiary road, a cul-de-sac, which has its junction with the R127 to the East. At present, the private access road serves one existing house on the adjoining site to the south (see **F12A/0234**).

2.0 Proposed Development

- 2.1. Permission is being sought to erect a house on a c.0.72ha site, as follows :
 - a c.140m², 3-bedroom bungalow
 - the house is c.18.2m wide, c.9.55m deep (c.11.55m including the porch) and c.7.0m high
 - the vehicular entrance set back off a private access road
 - the wastewater treatment system and percolation area are to be located to the front of the house, in the site's southeastern corner.
 - all associated site works.
- 2.2. Accompanying documents:
 - Supplementary application form for a rural house, together with Rural housing policy supporting documentation
 - Letter of Consent from existing landowner – Mr. R. Hughes
 - Site Characterisation Form

3.0 Planning Authority Decision

3.1. Decision

Decision to refuse planning permission, for 1no. Refusal Reason relating to non-compliance with rural housing policy Objective RH19.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The key issues considered as follows :

Principle of the Proposed Development

- Residential development is permitted in principle on RU zoned lands, subject to compliance with the Rural Settlement Strategy.

External Appearance and Visual Impact

- House design and scale is modest and simple.
- Concern regarding the roof to wall ratio which is considered to be disproportionate.
- Proposed chimneys to the front elevation considered incongruous, having regard to their height and location within the roof plane.

Compliance with the Rural Settlement Strategy

- The applicant has made application on the basis of "Close Family Ties". Table RH03 Part (i) for this category requires the applicant demonstrate with documentation that –
 - she is a close family member of the owners of the family home, and
 - she has lived in the family home, or within the locality of the family home (within 2km thereof) for at least 15years.
- The applicant has successfully demonstrated her link to the family home at Darcystown for a period in excess of 15years.
- However, the application site is located 3.75km from the family home.

- The Planning Authority calculate this distance to be closer to 3.9km, as the crow flies, and over 5km using the most direct route via local road.
- Objective RH19 requires new dwellings be located in close proximity to the family home. Where this is demonstrated to be not possible, “permit the new dwelling to be located on an alternative site which is within 2kms from the family home”.
- The proposed development is located nearly twice the maximum permitted distance from the family home, as specified under Objective RH19
- The applicant therefore, does not comply with this aspect of the Rural Settlement Strategy.
- Reference that An Bord Pleanála historically decided on two similar appeals, where Objective RH19 was a central consideration – **F11A/0085 / PL06F.239000** and **F12A/0052 / PL06F.240575**.

Impact on Residential Amenities of the Area

- The proposed new house is not overbearing in nature, and will not give rise to undue overlooking or overshadowing of adjoining property.

Conclusion

- Having regard to the over 3.75km separation distance between the applicant’s family home and the application site, the proposed development does not comply with Objective RH19 of the County Development Plan 2011
- Therefore the proposed development does not comply with the County Rural Settlement Strategy, and would be contrary to the proper planning and sustainable development of the area.

3.2.2. **Other Technical Reports**

Transportation Planning Section

Additional information required regarding 70m sightlines onto the public road from the private access road.

Water Services Section

No objection, subject to Conditions

3.3. Prescribed Bodies

Irish Water No objection, subject to Conditions

Dept. of Arts, Heritage, Regional, Rural and Gaeltacht Affairs No objection, subject to a Condition requiring pre-development archaeological testing.

3.4. Third Party Observations

None.

4.0 Planning History

4.1. Application site

None.

4.2. Adjacent site to the North

F07A/1116 Permission granted for a single storey bungalow, wastewater treatment system and all site works. Application to extend the duration of this permission subsequently refused. The development did not proceed.

F05A/1570 Permission refused for a single storey bungalow, wastewater treatment system and all site works. Refusal Reasons included :

- non-compliance with the rural housing policy.
- the development was not located adjacent the family home.

4.3. Adjacent site to the South

F12A/0234 Permission granted for a new bungalow, with secondary treatment system, and a new site access, with associated works.

F10A/0391 Permission refused for a new 1½ storey house, with secondary treatment system, new site access and ancillary works. Refusal Reasons included :

- applicant did not satisfactorily demonstrate no injury or interference with the historic monument.
- insufficient information regarding foul and surface water drainage.

5.0 Policy Context

5.1. National

Sustainable Rural Housing Guidelines 2005

Both the National Spatial Strategy 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 in general.

EPA Code of Practice

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

5.2. Development Plan

Fingal County Development Plan 2011-2017

Zoning Objective “RU” Rural

Objective : 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.

“Residential” permitted in principle, subject to compliance with the rural settlement strategy.

S8.3 Rural Fingal – Rural Living

Housing in the Countryside

Objective RH01 To facilitate those with a genuine rural generated housing need to live within their rural community.

Housing in the Countryside – Settlement Strategy

Rural Generated Housing Need

Table RH02 provides an eligibility summary.

New housing for the rural community other than for those who are actively engaged in farming :

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 – see copy attached. These detailed criteria include a requirement for supporting documentation and evidence.

Housing in the Countryside – Layout and Design

Objective RH19 Where a clustering layout is clearly demonstrated not to be available, permit the new dwelling to be located on an alternative site which is within two kilometres from the family home.

Housing in the Countryside – Rural Drainage

Objective RH24 Ensure compliance with the requirements for on-site treatment systems, and the EPA Code of Practice.

Objective RH25 Implement the recommendations of the Ground water Protection Scheme

Appendix 5 Outlines the 'Interim Siting and Design Guidance for Rural Housing'

5.3. Natural Heritage Designations

None.

6.0 The Appeal

6.1. Grounds of Appeal

- Acknowledge the Planning Authority's correct application of Objective RH19. However, argue that RH19 is not a fair or practical objective in this instance.
- Whereas the Planning Authority acknowledges the applicant complies with the criteria for "close family ties" (Objective RD03), she is being prevented from remaining in the rural area on a 'technicality' (ie. 3.8km is greater than the 2km allowed under Objective RH19).
- The strict application of stated distance or radius, contradicts the principles of the Sustainable Rural Housing Guidelines 2005 which provides that "policies should be formulated such that the housing requirements of the rural community are catered for".
- The 2km rule in effect creates a sub-zoning within the current RU zone. If the site is within 2km of the family home, permission is granted. Conversely, beyond 2km, permission is refused.
- 3.8km is not a long distance in the countryside. Effectively, the applicant is remaining within her local area.
- The applicant and the landowner are partners, and have a child. They wish to build a family home in the rural area. The current site is their only option. Effectively, the proposed development would meet the housing needs of 3 members of the rural community
- Having regard to the applicant's "very unique situation", request that the Board make an exception to the 2km rule in this case.
- No precedent would be set, as each site and applicant must be assessed on their own merits.

Rural Cluster

- The Rural Cluster RC zoning enables people with close ties to any rural area of Fingal, to have areas within the County where they can buy a site and build a house.

- The application site is on the periphery of the Rural Cluster of Greatcommon. The site is located within what is basically a de-facto cluster of houses.

Rural Housing Policy

- Argue the inconsistency and self-contradictory status of the current Fingal Rural Housing Policy. Specifically, point out that there is no specified maximum distance from the family home, when assessing housing need or criteria of applicants within a Rural Cluster such as at Greatcommon Cluster, approximately 150m away from the applicant's site.
- Rural housing policy regarding Rural Clusters is unfair to the applicant, who has a site available in the area where she has lived all her life.
- Concede that both the applicant and her partner qualify as suitable applicants in an RC Zone. However, no sites are available within Greatcommon Cluster. Point out the last sites sold were over €100,000, unaffordable to the applicant.
- The applicant qualifies for a new rural house under Table RH03, and the site is demonstrated suitable with respect to traffic safety and site drainage. However, the applicants eligibility is rescinded because the application site / family home separation distance is greater than the 2km determined by Objective RH19.
- Objective RH19 should not be abolished. Rather argue that an exception be given in this case, due to the unusual circumstances which sees 3 local people with the possibility of building a rural house and staying locally.
- Applicant has no objection to an occupancy clause or any other Condition being attached to any permission granted.

Planners Report

- Concerns raised in the planners report can be addressed by way of Conditions, requiring written agreements with the Planning Authority, prior to construction.
- The single, only refusal reason was non-compliance with Objective RH19.

Precedent – PL06F.239000

- Permission granted on appeal for a rural house c.3km from the family home. The Board determined there were 'conflicting objectives' in the Development Plan 2011.
- However in that case, permission was for a farm dwelling and the applicant fell into a different subcategory.
- It would not be proper to differentiate or discriminate between sub-categories of applicants from rural areas.

House Design

- In response to concerns regarding the disproportionality of the roof to wall void and the proposed chimneys as incongruous, point out that the height has been reduced from 7m to 6m and the chimneys have been removed altogether
- Applicant will consider alternative heat sources.

Entrance Road / Vision lines

- The existing entrance road was permitted under **F12A/0234**.
- Applicant can arrange to have the existing hedgerows cut to allow 70m sightlines in both directions. This can be agreed as a Condition to any permission granted.

6.2. Planning Authority Response

- Objective RH19 is a key tenet and central pillar of the Fingal Rural Settlement Strategy, given that all of Fingal is defined as being under strong urban influence in the 2005 Sustainable Rural Housing Guidelines.

Fairness and Practicality of Objective RH19

- The specified 2km proximity limit from the family home under RH19 is essential and reasonable. This ensures eligible members of the rural community can continue to live locally, whilst balanced against the need to secure the proper planning and sustainable development of rural Fingal.

- To allow members of the rural community to build anywhere within the County, on rural zoned lands, would fundamentally undermine this objective and the Planning Authority's Rural Settlement Strategy.
- Objective RH19 specifies that new one-off rural houses be located "at a location in close proximity to the family home". Where this is demonstrated as not being possible, RH19 allows an alternative site location within 2km from the family home, and where 2km constitutes the outer limit of acceptability.

Flexibility with respect to location would set an undesirable precedent for future similar development. Precedent is particularly unacceptable in the current case under consideration, where the application site is located within an area under significant development pressure (ie. within 5km of the Dublin Metropolitan Area).

- Emphasise that the 3.8km straight line, and the 5km by most direct local road route, separation distance from the family home, is significantly non-compliant with Objective RH19.
- Neither the applicant, or her partner are eligible for a house at the location of the application site.

Alleged inconsistency of the Rural Housing Policy with regard to Rural Clusters

- The applicant has misrepresented the Planning Authority's Rural Cluster Policy to the Board. The hypothetical example given by the applicant in the appeal submission is factually incorrect.
- On the contrary, a rural dweller from Powerstown, north of Blanchardstown and west of Tyrellstown, would not be eligible to build a house in Greatcommon Rural Cluster, close to the application site.
- Only qualifying persons from the Hinterland Area, as defined in the Regional Planning Guidelines, can be granted permission within a Hinterland Rural Cluster, and vice versa for qualifying persons from the Metropolitan Area.

Conclusion

- Accordingly, Objective RH19 has been correctly applied in the current case. This is acknowledged by the applicant in the appeal submission.

- If the Board is minded to grant planning permission, request that a Condition be attached requiring payment of a Development Contribution in accordance with the Planning Authority's Development Contribution Scheme.

6.3. **Observations**

None

6.4. **Further Responses**

None.

7.0 **Assessment**

7.1. I have examined the file and available planning history, considered the prevailing local and national policies, physically inspected the site and assessed the proposal and all of the submissions. The following assessment covers the points made in the appeal submissions, and also encapsulates my de novo consideration of the application. The relevant planning issues relate to :

- Principle and Location of the proposed Rural House development
- Visual Amenity Impact
- Road Access and Traffic Safety
- Wastewater Treatment
- Archaeological Heritage
- Appropriate Assessment.

7.2. **Principle and Location of the proposed Rural House development**

7.2.1. The application site is located in an unserviced rural area within Fingal County, on the northern fringes of the Dublin Metro Area, that is designated as being under strong urban influence in the Sustainable Rural Housing Guidelines 2005 and the Fingal County Development Plan 2011. Accordingly, I consider there should be a presumption against development at the application site, save for in instances where

it can be demonstrated that the applicant accords with the Planning Authority's Rural Settlement Strategy, as set out in the County Development Plan 2011.

- 7.2.2. Section 8.3 'Rural Living – Housing in the Countryside' of the County Development Plan 2011 (copy attached), sets out the Rural Settlement Strategy for the County, and delineates five categories under the heading 'Rural Generated Housing Need'. The applicant states that she qualifies under one of these categories, namely, as a person with close family ties to the Fingal rural community as defined in Table RH03 paragraph (i).
- 7.2.3. I have had regard to the applicant's 'Supplementary Application Form for Planning Permission for a Dwelling in a Rural Area' together with the evidential documentation included with the application. I am satisfied that the applicant has demonstrated her link to the family home at No.6 Darcystown, Balrothery, Balbriggan, Co. Dublin, for a period in excess of 15 years.
- 7.2.4. I have regard to Darcystown as the qualifying rural family home address of the applicant, for the purposes of Objective RH19 of the County Development Plan 2011. The applicant states the application site at Collinstown, Lusk is located approximately 3.75km from the family home at Darcystown. I note the Planning Authority's calculation of this separation distance as being closer to 3.9km as the crow flies, and over 5km using the most direct route via the local rural road network.
- 7.2.5. Having established close connections with the local rural area and eligibility for rural housing development, Objective RH19 requires that new rural single dwellings be located in close proximity to the family home. Where this is demonstrated to be not possible, the new dwelling should be located on "an alternative site which is within 2kms of the family home". The proposed development at Collinstown is located nearly twice the maximum permitted distance from the family home at Darcystown, as specified under Objective RH19. The applicant therefore, in my view, does not comply with this aspect of the Fingal Rural Settlement Strategy.
- 7.2.6. The applicant, on appeal, argues that she is being prevented from remaining within the rural area on a "technicality", with strict application of the stated 2km distance contradicting the principles of the Sustainable Rural Housing Guidelines 2005, which rather provides that policies be formulated such that the housing requirements of the rural community are catered for. Effectively the applicant argues that 3.8km is not a

long distance in the countryside, and accordingly she is remaining within her local area, in substantial compliance with the Fingal Rural Settlement Strategy and Housing policy.

- 7.2.7. Whilst noting the issues argued by the applicant, I do not share her conviction advocating a flexible approach to the 2km separation distance. Rather, I consider the use of “within” in the wording of policy Objective RH19, as clearly indicating that 2km represent the outer limits of what would be acceptable. In my view, and contrary to the argument made on appeal, the flexibility argued for by the applicant, would set an undesirable precedent for future application of Objective RH19, and undermine both Objective RH19 and the Fingal Rural Settlement Strategy. I believe that such precedent would be particularly unacceptable in the current case, as the application site at Collinstown, Lusk, is located in an area under significant development pressure, on the northern fringe of the Dublin Metropolitan Area.
- 7.2.8. In conclusion, I do not believe the applicant has satisfactorily demonstrated a local rural housing need, in compliance with the provisions of Section 8.3 of the Fingal County Development Plan 2011, and Objective RH19 particularly. In my view, this primary non-compliance by the applicant is such as to override any satisfactory compliance achieved, with relevant Standards relating to siting, design, drainage and traffic.
- 7.2.9. Accordingly, I believe the refusal reason stated by the Planning Authority for its decision to refuse planning permission, should be sustained. The proposed development at Collinstown, Lusk, would therefore, be contrary to the proper planning and sustainable development of the area.

7.3. Visual Amenity Impact

- 7.3.1. Having regard to the potential for negative visual amenity impact on the rural character of the RU Zone, I note that no designated Scenic Views or Viewing Points exist in the vicinity of the application site at Collinstown.
- 7.3.2. The application site itself is well screened from view from the local road network, by mature, dense and full hedgerows and trees, together with single house development with associated property boundary demarcation and landscaping. This

is particularly so along the R127 between Lusk and Skerries, as well as the L52651 local road, a cul-de-sac off the R127.

- 7.3.3. Set back c.175m from the R127 and c.70m from the L52651 local road respectively, I believe the proposed new dwellinghouse would be satisfactorily screened in the local Collinstown landscape, when viewed from the surrounding rural road network.
- 7.3.4. Accordingly, having regard to insitu mitigation of visual impact, I believe the scale, form and design of the proposed new dwellinghouse would not appear incongruous in the context of other development and land use in the vicinity. If deemed necessary, further mitigation of visual impact could be achieved by supplementary landscaping and planting around and within the application site.
- 7.3.5. Accordingly, I believe no disproportional negative visual impact will result locally, consequent of the proposed development.

7.4. Road Access and Traffic Safety

- 7.4.1. To facilitate the proposed development, a new vehicular access onto the application site is proposed off the c.160m private access road, currently serving the single recently completed house (**F12A/0234**), adjacent and to the south, and which opens onto the L52651 local road, a cul-de-sac that intersects the R127 to the east.
- 7.4.2. The private access road is straight, in the vicinity of the application site frontage. Having regard to the low speeds possible, the condition of the road and that only one other house is served, I believe the proposed new single domestic entrance to be satisfactory from a traffic safety perspective. I note also that the proposed development would be provided with adequate on-site car parking.
- 7.4.3. However, I share the Planning Authority and County Transportation Planning Section opinion that at the junction of the private access road with the L52651 local road, sightline visibility is limited to the east. Allowing for an adjusted maximum possible speed limit of 50km/hr along the L52651, I note that the Transportation Planning Section have regarded a sightline of 70m as appropriate at this junction, from a 2.4m setback to the roads edge. Whereas this appears possible to the westerly approach, this is not so along the easterly approach along the L52651 from the R127. If a 70m sightline to the east is to be achieved, works will be required to the boundary hedge

to the east, on lands which on the information available, appear to be not in the ownership of the applicant. Certainly, any works required, would not be contained within the application site, or on lands in the applicant's ownership.

7.4.4. Whereas the County Transportation Planning Section recommended the applicant attend to this issue by way of Further Information (F.I.), I note that the applicant was never requested to do so by the Planning Authority.

7.4.5. I understand that the Planning Authority's conclusion of the proposed development's primary non-compliance with policy Objective RH19 of the County Development Plan 2011, was such as to override any satisfactory compliance achievable with relevant Standards relating to siting and traffic safety.

7.5. **Sanitation Services**

7.5.1. The local area is unserved in terms of public waste water treatment, thus necessitating the use of an individual on-site effluent treatment system on the application site. I have had regard to the "Site Characterisation Form" report on file, conducted by ARC Design Services. I have further had regard to my own observations made at the time of site visit, most notably the absence of any standing water collection (this after rains). Further, I have verified the shown classification of the site on the 'GSI Vulnerability Map' as Moderate, and having a ground water protection response of R1, under the EPA Code of Practice. I understand single house effluent treatment systems are acceptable in such areas, subject to normal good practice.

7.5.2. I note that in the 2.3m deep Trial Hole, a water table was recorded at a depth of 2.20m from the ground surface. 'T' and 'P' test results of 65.00 and 14.89 respectively were recorded, and considered as falling within the allowable range set out by the EPA Guidelines for a secondary treatment system to EPA Code of Practice.

7.5.3. I am satisfied as to the capacity of the site's ground and soils, to facilitate on-site effluent treatment and disposal without threat to public and environmental health, subject to compliance with the recommendations contained within the site characterisation report. In this regard, I note that neither the County Water Services

Section or Irish Water expressed any objection to the proposed waste water treatment system arrangements.

7.6. Archaeological Heritage

- 7.6.1. The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs - DAU confirm the application site's proximity immediately adjacent to an enclosure site of archaeological interest – Recorded Monument DU008-002, which is subject to statutory protection. Should permission be granted for the proposed development, the Department recommend that a Condition be attached requiring 'Pre-Development Testing'. I share this opinion.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and modest scale of the proposed development, to the location of the site within a rural environment, and to the separation distance and absence of a clear direct pathway to any European site, no Appropriate Assessment issues arise and 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 Recommendation

- 8.1. I recommend that planning permission should be Refused for the reasons set out below.

9.0 Reasons and Considerations

The application site is zoned 'RU-Rural' in the Fingal County Development Plan 2011-2017. Under the RU zoning objective, single house residential development is only permitted where the applicant can demonstrate compliance with the Rural Settlement Strategy, as set out in the County Development Plan 2011. Objective RH19 requires that new dwellings in the rural area of the County be sited at a

location in close proximity to the family home. Where such an arrangement is clearly demonstrated not to be available, the new dwelling is permitted to be located on an alternative site which is within 2km from the family home. In this instance, the family home is located approximately 3.8km to the north, or over 5km by the most direct local road route, from the family home. The proposed development would therefore contravene materially Objective RH19 of the Fingal County Development Plan 2011-2017, and would set an undesirable precedent for other future similar development. Accordingly, the proposed development is contrary to the proper planning and sustainable development of the area.

L. W. Howard
Planning Inspector

09th December 2016