



An
Bord
Pleanála

Inspector's Report PL06F.248315

Development	Construction of house including new shared parking courtyard and new shared driveway off existing laneway and all associated site works.
Location	Dubber House, Dubber Cross, Dublin 11
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0027
Applicant	Joseph Mooney
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Joseph Mooney
Observer(s)	daa
Date of Site Inspection	29 th June 2017
Inspector	Niall Haverty

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.1479 ha, is located in the townland of Dubber, Dublin 11. It forms part of a field to the south of Dubber House (a protected structure), which is situated at the northern end of a cul-de-sac known as Dubber Cross or Dubber Lane (L30801), accessed off the R122 regional road.
- 1.2. The site is relatively level and it is bounded by a hedgerow to the south, the driveway to Dubber House to the east, while it is currently undefined to the north and west. The site is currently accessed by an agricultural field gate, adjacent to the gated entrance to Dubber House. Lands surrounding the appeal site are generally in agricultural use, while development along the L30801 cul-de-sac comprises a mix of residential development, generally comprising a mix of semi-detached cottages, as well as more recent detached houses, as well as a number of warehousing/industrial type developments.
- 1.3. Dublin Airport is located c. 800m to the north of the appeal site, while the M50 motorway is c. 600m to the south, with Finglas located further to the south.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a two storey detached house, including a shared parking courtyard and shared driveway off the existing driveway to Dubber House.
- 2.2. A concurrent planning application for another detached house immediately to the west of the appeal site is currently under consideration by Fingal County Council (Reg. Ref. F17A/0026). Both houses are of very similar design and it is intended that the two houses will share the same parking courtyard and driveway.
- 2.3. The proposed house has four bedrooms and a gross floor area of 213 sq m. It has a render finish with metal standing seam pitched roof and a single storey element to the rear (south). A 2.85m high limestone wall forms part of the front (northern) elevation of the house and extends westwards beyond the house to form a shared boundary wall with the second proposed house to the west. A 2.4m high sliding steel gate is situated within the stone wall to provide access to the shared parking

courtyard via a proposed shared gravel driveway along the northern boundary of the site.

- 2.4. An Archaeological Assessment Report and documentation regarding the applicant's health circumstances were submitted with the planning application.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Fingal County Council decided to refuse planning permission for three reasons, which can be summarised as follows:

1. Site is zoned RU under Fingal Development Plan 2011-2017. Applicant has failed to demonstrate compliance with requirements of Table RH03(iii) and proposed development would therefore contravene materially Objective RH15 and the RU land use zoning objective.
2. Applicant has not demonstrated that a large two storey house in conjunction with concurrent application under F17A/0026 would not have an impact on Dubber House, a protected structure. Proposed development would therefore contravene materially Objective AH13.
3. Applicant has not demonstrated that foul water can be appropriately disposed of.

3.2. Planning Authority Reports

- 3.2.1. The Planning Officer's report can be summarised as follows:

- Residential development is permitted in principle on RU lands, subject to compliance with rural settlement strategy.
- Applicant's medical situation has been stated, but no justification for the need for this house has been provided and neither medical practitioner has stated that for medical reasons the applicant requires a home in the rural area.

- Applicant's stated family home is 9 Meakstown Cottages. The proposed development if granted would result in the applicant moving away from the family home.
- Applicant does not comply with Rural Housing Strategy in terms of demonstrating compliance with Table RH03(iii).
- Any development on these lands has to respect character and setting of Dubber House. Proposed development and concurrent application fail to do so.
- Length of house is excessive, as is mass of proposed development combined with concurrent application and proposed 2.85m high boundary wall.
- Proposed stone wall is overly bulky, as boundaries in the area are primarily in the form of hedgerows. Applicant has failed to demonstrate compliance with Objective AH13, with regard to safeguarding protected structures.
- Provision of two houses on this site would be inappropriate and would have a negative impact on the visual amenity of the area with respect to character of Dubber House.
- It is not foreseen that proposed development would have a negative impact on residential amenity in terms of overlooking, loss of privacy or overshadowing.

3.3. Other Technical Reports

3.3.1. Conservation Officer:

- The site is a sensitive location within the curtilage of Dubber House due to its position to the front of the house.
- The design for any proposal needs to be sensitive in how it will respond to setting and not be overly dominant or visually intrusive.
- While separate applications have been made for the two adjacent houses, the assessment of the impact on Dubber House has to be evaluated on both an individual and combined basis.

- Conservation Officer has concerns regarding the granting of permission for both houses due to the extent of the two storey elevations presented towards Dubber House.
- The house proposed under the current application will be the most prominent and visible on the main avenue and if one of the houses were to be omitted, this would probably be the most appropriate one.
- No objection to materials proposed or architectural approach taken of a contemporary interpretation of Irish vernacular buildings, but there are concerns regarding the long linear length of the dwelling, which is similar to Dubber House.
- Any new dwelling should be subservient in scale to the main house, but proposed houses seem to compete with it.
- Length of house should be revisited and revised, and additional drawings and photomontages submitted to allow for a full assessment of the impact on Dubber House.

3.3.2. Transportation Planning:

- No objection subject to conditions.

3.3.3. Water Services:

- No objection subject to conditions.

3.4. **Prescribed Bodies**

3.4.1. Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs:

- No objection subject to condition regarding pre-development archaeological testing.

3.4.2. Irish Water:

- The applicant is request to submit details of the proposed foul water drainage for the development, including the connection to the public sewer, pipe size and gradient, invert and cover levels and drainage design calculations.

3.4.3. daa:

- Existing and proposed noise environment to be fully assessed.
- Demonstrate that appropriate internal noise levels can be achieved and maintained.
- Appropriate noise mitigation measures should be proposed by the applicant and implemented.

3.5. **Third Party Observations**

- None.

4.0 **Planning History**

4.1. **Appeal Site**

4.1.1. I am not aware of any relevant planning history on the appeal site.

4.2. **Surrounding Area**

4.2.1. **F17A/0026:** There is a concurrent planning application for a two storey four bedroom detached house immediately to the west of the appeal site, which was submitted by one of the applicant's daughters. The house is similar in design to the proposed development and is intended to utilise the same shared parking courtyard and driveway. A request for further information issued on 10th March 2017 and does not appear to have been responded to yet.

5.0 **Policy Context**

5.1. **Fingal Development Plan 2017-2023**

5.1.1. The site is governed by the policies and provisions contained in the Fingal Development Plan 2017-2023.

5.1.2. I note that the zoning of the appeal site and surrounding area has changed under the new Development Plan, which came into effect shortly after the Planning Authority made their decision. At the time of assessment of the planning application by the Planning Authority, the site was zoned 'RU', to 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. The appeal site and surrounding lands have subsequently been zoned 'GE', to provide opportunities for general enterprise and employment.

- 5.1.3. 'Residential' is listed as a use class that is not permitted within the 'GE' zoning objective, except where a person who is an immediate member of a family in the immediate area who has not been granted permission for a dwelling previously, and is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances.
- 5.1.4. The 'GE' zoned lands within which the appeal site is located are also designated as being in Masterplan area 11.B. Objective ED90 seeks to prepare and/or implement a series of Masterplans during the lifetime of the Plan, including for the MP 11.B area.
- 5.1.5. An area c. 320m south of the appeal site, incorporating part of Dubber Cross and Meakstown Cottages (where the appellant's family home is located) is zoned 'RC' and is designated as the 'Dubber Cross Rural Cluster'. This zoning objective seeks to provide for small scale infill development serving local needs while maintaining the rural nature of the cluster. Objective RF19 seeks to encourage consolidation of rural housing within existing Rural Clusters which will cater for rural generated housing demand, as an alternative to housing in the open countryside, and encourage the reuse of existing buildings within the cluster over any new development.
- 5.1.6. The northern part of the appeal site is located within the Inner Airport Noise Zone, while the southern part of the site, including the location of the proposed house, is located within the Outer Airport Noise Zone.
 - **Objective DA07:** Strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone, and actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone, as shown on the Development Plan maps, while recognising the housing needs of established families farming in the zone. To accept that time based operational restrictions on usage of a second runway are not unreasonable to minimize the adverse impact of noise on existing housing within the inner and outer noise zone.

- **Objective DA08:** Notwithstanding Objective DA07, apply the provisions with regard to New Housing for Farming Families only, as set out in Chapter 5 Rural Fingal, within the Inner Noise Zone subject to the following restrictions:
 - Under no circumstances shall any dwelling be permitted within the predicted 69 dB LAeq 16 hours noise contour,
 - Comprehensive noise insulation shall be required for any house permitted under this objective,
 - Any planning application shall be accompanied by a noise assessment report produced by a specialist in noise assessment which shall specify all proposed noise mitigation measures together with a declaration of acceptance of the applicant with regard to the result of the noise assessment report.

5.1.7. Dubber House is recorded on the Record of Protected Structures (No. 617) and described as a late 18th or early 19th century country house reputed to be built out of the ruins of Dubber Castle. Dubber House is also a recorded archaeological site (DU014-019) and the site of Dubber Castle to the north of Dubber House is also a recorded site (DU014-018).

5.2. Sustainable Rural Housing Guidelines for Planning Authorities 2005

5.2.1. The Rural Housing Guidelines seek to provide for the housing requirements of people who are part of the rural community in all rural areas, including those under strong urban based pressures. The principles set out in the Guidelines also require that new houses in rural areas be sited and designed to integrate well with their physical surroundings and generally be compatible with the protection of water quality, the provision of a safe means of access in relation to road and public safety and the conservation of sensitive areas.

5.2.2. Section 4.3 of the Guidelines states that planning authorities should recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support. In such cases, and in the absence of any strong environmental, access or traffic reasons for refusal, a

planning authority should consider granting permission, subject (where appropriate) to conditions regarding occupancy.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. A first party appeal was made on behalf of the applicant and the grounds of appeal can be summarised as follows:

- Applicant has exceptional health needs and has a genuine rural generated housing need to reside at the subject site. Applicant therefore complies with Objectives RH05 and RH15.
- Documentary evidence was submitted with application to demonstrate compliance with Rural Housing Policy. Appellant has been resident in family home for the majority of his life, and resides there with his wife and two daughters and two grandchildren.
- Appellant's health has suffered in recent years and it is essential that an appropriately designed dwelling is constructed. It is intended that his daughter will reside in the family home at 9 Meakstown Cottages and the appellant and his wife would reside in the proposed dwelling.
- The existing family home is unable to be adapted to a satisfactory layout due to its age and layout. The daughter who continues to reside there will provide a level of care for her father.
- Subject site is within GE zoning under new Fingal Development Plan 2017-2023. Residential development is permitted within this zoning on the basis of the applicant's exceptional health circumstances.
- Sustainable Rural Housing Guidelines for Planning Authorities suggest that exceptional health circumstances would constitute genuine rural housing need.
- Concurrent planning application for a second house has not been refused and is the subject of a request for further information. Agent for both applications has been liaising with Conservation Officer regarding the redesign of the

second house and she has indicated that in principal the revised scale and massing is acceptable.

- Drawings of foul drainage are enclosed with appeal. It is intended to connect to an existing manhole to the rear of Dubber Cottage and permission for same will be agreed with the property owner.
- It is applicant's intention to have a full level survey undertaken once planning permission has been granted. Agent estimates a difference in existing ground levels of 2.5m to 3m between the existing manhole and the appeal site. Based on assumed invert levels, adequate falls can be achieved.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- Objective RF39 refers to applicants who are considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances. The applicant currently lives in the family home at 9 Meakstown Cottages and would be moving away from a single storey dwelling. The letters from medical practitioners do not indicate medical need to live in a rural location.
- As indicated at pre-planning stage, a family flat in accordance with Objective DMS43 may be more appropriate.
- Information provided as part of planning application did not sufficiently demonstrate that dwelling and concurrent application would not impact negatively on Dubber House.
- Applicant states that full drainage details will be available following receipt of planning permission. This is not acceptable as it gives rise to uncertainty regarding the ability of the proposed dwelling to be adequately served by one on-site waste water treatment plant.
- If appeal is successful, provision should be made for financial contribution in accordance with s48 scheme.

6.3. Observations

6.3.1. An observation was made by daa. It can be summarised as follows:

- Proposed development is within Outer Airport Noise Zone.
- Objective DA07 of the Fingal Development Plan seeks to strictly control provision of new residential development within the OANZ.
- If permission is granted, daa requests a condition requiring noise insulation to an appropriate standard.

7.0 Assessment

7.1. I consider that the key issues in determining the appeals are as follows:

- Principle of development.
- Impact on Architectural and Archaeological Heritage.
- Wastewater management.
- Appropriate Assessment

7.2. Principle of Development

7.2.1. At the time that the planning application was assessed by the Planning Authority, the appeal site was zoned 'RU', and the rural housing provisions of the Fingal Development Plan 2011-2017 were applicable. The appeal site and surrounding lands were subsequently rezoned under the new Fingal Development Plan 2017-2023, and are now zoned 'GE', for general enterprise and employment.

7.2.2. Chapter 5 of the Development Plan relates to Rural Fingal and states that the countryside for the purposes of this section of the Plan are those areas with the rural zoning objectives identified as Rural (RU), Greenbelt (GB), and High Amenity (HA).

7.2.3. The definition of rural generated housing need includes persons who are a member of a rural-located family, who are considered because of exceptional and demonstrated health reasons to have a need to reside beside their family home in the rural area as defined in Table RF03 paragraph (iii). That paragraph states:

- A person who is an immediate member of a rural family who has not been granted permission for a rural dwelling, since the 19th October 1999, and is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances. The application for a rural dwelling must be supported by two sworn affidavits from relevant and qualified professionals, with at least one from a registered medical practitioner. A qualified representative of an organisation which represents or supports persons with a medical condition or disability may supply the other.

It is to be noted that criterion no. (iii) applies in areas which have zoning objective, HA, as well as in areas with zoning objective GB and RU.

- 7.2.4. Notwithstanding its current rural character, the appeal site, with its GE zoning, is no longer part of the rural area or countryside insofar as the Planning Authority's rural settlement strategy is concerned. Therefore, regardless of whether or not the appellant has a rural generated housing need, I consider that the rural housing provisions of the Development Plan and the Sustainable Rural Housing Guidelines for Planning Authorities are no longer applicable to the appeal site.
- 7.2.5. The 'GE' zoning on the appeal site is generally for employment related uses, and residential use is not permitted under this zoning objective, except where a person who is an immediate member of a family in the immediate area who has not been granted permission for a dwelling previously, and is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances.
- 7.2.6. The appellant has submitted documentation regarding his health circumstances. It is not clear from the documentation on file, however, why the existing single storey family home at Meakstown Cottages, where the appellant is stated to have resided for his entire life, is no longer suitable, or capable of being made suitable, to accommodate his health circumstances. Furthermore, the appeal site is not adjacent to the family home. The family home is located within the Dubber Cross Rural Cluster, while the appeal site is located outside of the Cluster, at a distance of c. 600m from the family home.
- 7.2.7. Given that the proposed house is not adjacent to the family home, no justification has been provided as to why a house is required on health grounds on what are now

employment zoned lands, rather than within the Rural Cluster in accordance with Objective RF19 or within the residential areas to the south of the M50, many of which are within similar proximity to the family home as the appeal site.

- 7.2.8. In conclusion, having regard to the 'GE' zoning of the site under which residential use is not permitted except where a person is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances, and having regard to the fact that the appeal site is not adjacent to the family home, I consider that the proposed residential development would contravene materially the said zoning objective and would be contrary to the proper planning and sustainable development of the area.

7.3. Impact on Architectural and Archaeological Heritage

- 7.3.1. The appeal site is located within the curtilage of Dubber House, which is a protected structure. Dubber House is described in the RPS as a late 18th or early 19th century country house reputed to be built out of the ruins of Dubber Castle. It is a two storey structure with a more recent single storey porch/sunroom structure to the front elevation, which faces southwards towards the appeal site. It also features a number of outbuildings to the rear (north) forming an enclosed courtyard area. An estate-style iron railing separates Dubber House from the paddock/field within which the appeal site is located and a number of trees are located along this fence.
- 7.3.2. The appellant has submitted 3-D images with the appeal, which show the proposed development and the concurrent development to the west from a number of viewpoints. The drawings states that these images were submitted to the Conservation Officer in connection with the request for additional information for the adjacent house. I note that the design of the proposed house on these 3-D images is significantly different from the drawings of the house submitted to the Planning Authority and I therefore consider the images to be of limited value in assessing the potential impact of the proposed development on Dubber House.
- 7.3.3. I consider the design of the proposed house to be of high quality in terms of its use of a contemporary vernacular style and choice of materials. However, I consider that the cumulative impact of the two houses, both of which individually rival Dubber House in size and height, combined with the overly dominant stone wall (2.85m high

and c. 40m long) which connects the two houses and the 2.4m high sliding steel gates serves to sever Dubber House from part of its curtilage and detracts from the setting and character of Dubber House which I consider to be defined by the relationship between the house and the paddock/field area to the front. Dubber House and its curtilage is surrounded by hedgerows and trees, and I consider that the proposed stone wall is unduly intrusive within this established sylvan setting due to its excessive height and length and its use of a material which is alien to the character of the protected structure and its curtilage. I also consider that the design approach chosen for the proposed development and the adjacent concurrent planning application is inward looking, with the focus being on the relationship between the two new houses rather than on the relationship between the protected structure and the new development. In my opinion this serves to materially and adversely affect the character and setting of Dubber House and I consider that the proposed development would, therefore, seriously injure the amenities of the area and be contrary to the proper planning and sustainable development of the area.

- 7.3.4. With regard to archaeological heritage, Dubber House is a recorded archaeological site (DU014-019) and a second archaeological site, which is the site of Dubber Castle, is located to the north of Dubber House (DU014-018). An Archaeological Assessment Report was submitted with the planning application which sets out the history of Dubber House and Castle and notes that, although there is no indication of archaeological sites or features on the appeal site, the site is nevertheless of archaeological potential, and archaeological monitoring is recommended. The Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs made an observation at planning application stage indicating that they had no objection to the proposed development, subject to a condition regarding pre-development archaeological testing. While I consider that the proposed development will not impact on any recorded archaeological features, there is potential for unknown features to be affected. I therefore recommend that a suitable condition be included requiring archaeological monitoring, should the Board is minded to grant planning permission.

7.4. Wastewater Management

- 7.4.1. In response to the third reason for refusal, the appellant has submitted drainage drawings for the appeal site, indicating the proposed connection to an existing public foul sewer located c. 150m to the south east of the appeal site, as well as the associated Irish Water network drawing.
- 7.4.2. I note that the existing manhole that it is proposed to connect to is located to the rear of an existing house on Dubber Lane. It is proposed to run a new foul sewer southward along Dubber Lane, before crossing through lands which appear to be outside of the appellant's ownership or control, in order to connect to the public foul sewer network. The invert and cover levels indicated on the drawing are estimated or assumed, and are indicated as being subject to confirmation.
- 7.4.3. While the appellant's drainage drawing shows the existing public foul sewer running southward from the proposed connection manhole, the relevant Irish Water drawing indicates that the flow is northward, towards this manhole. It is not entirely clear from the submitted Irish Water drawing where the foul drainage flow then goes, with the drawing appearing to indicate that it joins a stormwater drain discharging to a drainage ditch.
- 7.4.4. There is an absence of sufficient clarity on this issue in my opinion. While I am recommending refusal on the basis of the principle of the development, if the Board is minded to grant permission I consider that it would be advisable to seek additional information from the appellant in order to ensure that foul water arising from the proposed development can be adequately disposed of.

7.5. Other Issues

- 7.5.1. The appeal site is partially within Dublin Airport's Inner Noise Zone and partially with the Outer Airport Zone. Objective DA07 of the Development Plan seeks to strictly control inappropriate development and require noise insulation where appropriate within the Outer Noise Zone and to actively resist new provision for residential development and other noise sensitive uses within the Inner Noise Zone.
- 7.5.2. The proposed house is located on the southern part of the site, entirely within the Outer Noise Zone and the only development proposed within the Inner Noise Zone is

the shared driveway and landscaping. I therefore consider that the proposed development is consistent with Objective DA07 of the Development Plan, and if the Board is minded to grant permission, I recommend that a condition be included to require that adequate noise insulation is provided.

7.6. Appropriate Assessment

- 7.6.1. Having regard to the nature and scale of the proposed development, which relates to the construction of a single house on a site that is not within or in close proximity of any Natura 2000 sites, I am satisfied that 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

1. Having regard to the 'GE' zoning of the site, the objective of which is to provide opportunities for general enterprise and employment, and under which residential use is not permitted except where a person who is an immediate member of a family in the immediate area who has not been granted permission for a dwelling previously, and is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances, and having regard to the fact that the site is not adjacent to the family home where the applicant is currently residing, it is considered that the proposed residential development would contravene materially the said zoning objective and would be contrary to the proper planning and sustainable development of the area.
2. It is considered that, by reason of its siting, uncharacteristic, overly dominant and visually intrusive design, the proposed development would materially and adversely affect the character and setting of Dubber House, which is a

Protected Structure and would, therefore, seriously injure the amenities of the area and be contrary to the proper planning and sustainable development of the area.

Niall Haverty
Planning Inspector

3rd July 2017