



An  
Bord  
Pleanála

## Inspector's Report PL.06F.249397.

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<b>Development</b>	Dwelling House.
<b>Location</b>	Dubber House, Dubber Lane, St. Margaret's, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	F17A/0026.
<b>Applicant(s)</b>	Lisa Mooney.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Refuse Permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Lisa Mooney.
<b>Observer(s)</b>	DAA.
<b>Date of Site Inspection</b>	18 <sup>th</sup> January 2018.
<b>Inspector</b>	Karen Kenny.

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## 1.0 Site Location and Description

- 1.1. The site is located in the townland of Dubber in Dublin 11. The site is situated c. 1 kilometre north east of the interchange of the M50 and N2 at Finglas and c. 800 metres to the west of Dublin Airport. The site is at the northern end of Dubber Lane, a short cul-de-sac that is accessed from the R122 (Finglas to Balbriggan) Regional Road.
  - 1.1.1. The site, with a stated area of 0.1479 hectares, forms part of a larger landholding of approximately 6 hectares that is associated with Dubber House (a protected structure).
  - 1.1.2. The site is relatively level and it is bounded by a hedgerow to the south and west, the driveway to Dubber House to the east, while the northern boundary is undefined. 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 Dubber Lane comprises a mix of residential development, generally comprising a mix of semi-detached cottages, as well as more recent detached houses, and a number of warehousing/industrial type developments.

## 2.0 Proposed Development

- 2.1.1. The proposed development consists of the construction of a detached two storey dwelling on lands to the south of Dubber House (protected structure).
- 2.1.2. The application to Fingal County Council was accompanied by a concurrent planning application for a second detached dwelling on adjoining lands to the east (Reg. Ref. PL.06F.248315 / F17A/0026). The proposed dwellings were of similar design and both dwellings shared a parking courtyard and an access driveway. The dwelling proposed under Reg. Ref. PL.06F.248315 / F17A/0026 was refused permission by Fingal County Council and was refused permission on appeal by An Board Pleanála.
- 2.1.3. Revised plans submitted at further information stage are for an 'L' shaped dwelling with a pitched roof over and a single storey element on the western end. The dwelling would have a ridge height of 7.2 metres. The external finishes include a

metal roof, smooth render walls and a limestone wall forms part of the rear (northern) elevation of the house and extends westwards beyond the house.

2.1.4. An Archaeological Assessment Report was submitted with the planning application.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse Permission. The reason for refusal is as follows:

1. The site is on lands zoned GE – General Employment under the Fingal Development Plan 2017-2023, the objective of which is to ‘provide opportunities for general enterprise and employment’ where permission for residential development may only be permitted where the applicant 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’. The applicant does not demonstrate compliance with the foregoing requirements and the development as proposed would therefore contravene materially a development objective indicated in the Development Plan for the zoning of land for use solely or primarily of particular areas for particular purposes. The development as proposed would therefore be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning Officer’s Report can be summarised as follows:

- The site was zoned ‘RU’ rural under the Fingal County Development Plan 2011-2017, which was in force at time of initial consideration. Housing is open for consideration in this zoned based on the provisions of the Rural Housing Policy set out in Chapter 8 of the Development Plan.

- Following an initial assessment further information was sought in relation to rural housing need, impact on Dubber House (protected structure), foul water drainage and access.
- The Planning Officer's Report following receipt of further information concludes that the applicant has lived in the area for in excess of 15 years demonstrating compliance with Objective RH03 of the Fingal Development Plan 2011-2017 and that issues raised in relation to design and impact on Dubber House (PS), foul water drainage, and access were satisfactorily addressed.
- The decision dated 20<sup>th</sup> September 2017 was made under the Fingal County Development Plan 2017-2023, which became effective in March 2017. The zoning of the site under the new Development Plan is GE-General Employment, where it was formally RU-Rural. Residential development is permitted in this zone on the basis of exceptional health circumstances only. The applicant has not exceptional health circumstances.

### 3.2.2. Other Technical Reports

Transportation Section: No objection.

Water Services Section: No objection.

Conservation Officer: No objection.

Parks and Green Infrastructure: No objection.

### 3.3. Prescribed Bodies

Irish Water: No objection.

DAHG: No objection subject to pre-development archaeological testing.

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.

### 3.4. **Third Party Observations**

None.

## 4.0 **Planning History**

4.1.1. Reg. Ref. PL.06F.248315 / F17A/0026: Application for detached two storey dwelling on lands adjoining the subject site. The applicant was submitted to Fingal County Council with the subject application and included a dwelling of similar design and a shared parking courtyard and access driveway. Permission refused by Fingal County Council. This decision was subject to a first party appeal. An Board Pleanála upheld the decision of the Planning Authority and refused permission. The reasons for refusal are as follows:

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 materially contravene the said zoning objective and would, therefore, 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.

## 5.0 Policy Context

### 5.1. Sustainable Rural Housing Guidelines for Planning Authorities 2005

- 5.1.1. 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 require that new houses in rural areas are sited and designed to integrate well with their physical surroundings and generally be compatible with the protection of water quality, road and public safety and the conservation of sensitive areas.
- 5.1.2. 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.

### 5.2. Development Plan

- 5.2.1. The site is governed by the policies and provisions contained in the Fingal Development Plan 2017-2023. The site was zoned 'RU - Rural' under the Fingal Development Plan 2011-2017. The site is zoned 'GE-General Employment' under the Fingal Development Plan for the period 2017-2023, which came into effect in March 2017. The 2011-2017 Development Plan was in force at the time of the initial assessment, while the 2017-2023 Development Plan was effective when the Planning Authority made its decision.
- The appeal site and surrounding lands are zoned 'GE', with an objective to *'provide opportunities for general enterprise and employment'*.
  - 'Residential' development is not permitted within the 'GE' zone, 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, is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances"*.

- 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.
- Lands (c. 300 metres) to the south at Dubber Cross and Meakstown Cottages (where the appellant's family home is located) are identified 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.
- 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.

- Dubber House is recorded on the Record of Protected Structures (No. 617). The house is described as a late 18<sup>th</sup> or early 19<sup>th</sup> 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).

### 5.3. Natural Heritage Designations

None.

## 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:

- The site was zoned 'RU – Rural' under the Fingal Development Plan 2011-2017 which was effective at the time of the application. A rural dwelling is 'permitted in principle' in the Development Plan subject to compliance with the rural settlement strategy.
- The appellant complies with objective RH05 of the 2011-2017 Development Plan, which permits a maximum number of two incremental houses for those who meet the relevant criteria set out in this chapter within areas with zoning objective RU plus one house for a person with exceptional health circumstances.
- No other family members have received permission for a rural dwelling and the applicant has a genuine rural generated housing need to reside at the site.
- Applicant has applied for permission on the basis of her close family ties and complies fully with Objective RH15 to 'permit new rural dwellings in areas

which have zoning objective RU or GB, on suitable sites where the applicant meets the criteria set out in Table RH03.

- Documentary evidence enclosed with the application demonstrates that the applicant has been resident at the family home in the area for the majority of her life.
- Information submitted with application details applicant's close family ties and therefore complies with the Rural Housing Policy and in particular Objective RH15 and Table RH03 (RU and GB zone), which was in effect at the time of the application.
- Sustainable Rural Housing Guidelines for Planning Authorities, 2005 (Section 4.3) refer to persons who are an intrinsic part of the rural community stating that such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community citing examples of people who have lived most of their lives in rural areas and are building their first homes.

## 6.2. Planning Authority Response

- Applicant was advised at pre-planning that their lands were proposed to be zoned from 'RU Rural' to 'GE General Employment' in the 2017-2023 Development Plan. The Development Plan came into force in March 2016.
- The application was lodged in January 2017. Further information was submitted in August 2017. The applicant applied for permission on the basis of close family ties and not on the basis of exceptional health circumstances. Reference to exceptional health circumstances in the appeal is not relevant and no further details have been submitted to demonstrate exceptional health circumstances.
- The decision of the Planning Authority was made in the context of the new 2017-2023 Development Plan.
- It is not considered that the proposed development would negatively impact on the visual or residential amenity of the area or on the character of the nearby protected structure.

### 6.3. Observations

None.

## 7.0 Assessment

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

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

### 7.2. Principle of development.

7.2.1. The Fingal County Development 2017-2023 is the relevant statutory plan. The appeal site is zoned 'GE-General Employment' in the Fingal Development Plan with an objective to 'provide opportunities for general enterprise and employment'. The Development Plan came into effect in March 2017 and was in effect at the time of the Planning Authorities decision. Dwellings are not permitted in the GE zone, *"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"* (P373 refers).

7.2.2. At the time that the application was made the appeal site was zoned 'RU-Rural', and the rural housing provisions of the Fingal Development Plan 2011-2017 were applicable.

7.2.3. Notwithstanding its current rural character, the appeal site is now zoned 'GE – General Employment and is no longer part of the rural area 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.

- 7.2.4. The 'GE' zoning on the appeal site is seeks to facilitate opportunities for general 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.
- 7.2.5. The grounds of appeal argue that the appellant complies with the rural housing policies that pertained to the site at the time of making the application. However, the applicant has not demonstrated compliance with the exceptional circumstances set out under the GE zoning objective.
- 7.2.6. I would also note that the applicant's family home at Meakstown Cottages, 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 what are now employment zoned lands, rather than within the Rural Cluster in accordance with Objective RF19 which seeks to consolidate rural housing within Clusters or within the proximate residential zoned lands 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, a protected structure. Dubber House is described in the RPS as a late 18<sup>th</sup> or early 19<sup>th</sup> 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 a paddock to the front, within which the appeal site is located. There are a number of trees along this fence.

- 7.3.2. The proposed dwelling is located in the south western corner of the paddock area to the front (south) of Dubber House. Revised details received by the Planning Authority at further information stage include 3-D images, which show the proposed development from a number of viewpoints.
- 7.3.3. On balance, and notwithstanding the prominent location of the appeal site within the paddock area to front, I consider the revised design received by the Planning Authority at further information stage is of high quality in terms of its use of a contemporary vernacular style and choice of materials. The architectural approach and reduced scale and form of the dwelling, coupled with the omission of a second dwelling and stone wall, has significantly reduces the visual prominence of the proposed development, and I consider that it would not unduly rival Dubber House or be overly dominant.
- 7.3.4. In my opinion the development would not adversely affect the character and setting of Dubber House to an unacceptable degree and I consider that the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.
- 7.3.5. 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. Other Issues**

- 7.4.1. 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. The proposed house is located on the southern part of the site, entirely within the Outer Noise Zone. 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.
- 7.4.2. The drawings and details submitted with the application and in response to the request for additional information, are considered to satisfactorily address surface water drainage, foul drainage and water supply.

#### **7.5. Appropriate Assessment**

- 7.5.1. 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 permission should be Refused for the reason set out below.

## 9.0 Reasons and Considerations

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.

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Karen Kenny  
Senior Planning Inspector

26<sup>th</sup> January 2018