



An
Bord
Pleanála

Inspector's Report ABP-300264-17

Development	Single-storey dwellinghouse and garage, wastewater treatment system with percolation area and associated works
Location	O'Brien's Lane, Clonmethan, Oldtown, County Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F17A/0534
Applicant(s)	Suzanne McDonnell
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First-Party
Appellant(s)	Suzanne McDonnell
Observer(s)	None
Date of Site Inspection	16 th April 2018
Inspector	Colm McLoughlin

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Clonmethan to the west of Oldtown village, approximately 400m from the village centre and in an area characterised by single-dwellings and gently-undulating farm lands. The site is situated along a private road that connects the Naul Road (R122 regional road) with O'Brien's Lane, a narrow country lane that follows the Daws River and serves agricultural lands and numerous dwellings, including the family home of the applicant.
- 1.2. The appeal site comprises 0.3ha of agricultural land and is setback over 100m from O'Brien's Lane and includes 84m frontage onto the private road. Mature hedgerows and trees mark the eastern and northern boundaries of the site, a post and wire fence marks the western boundary and the southern boundary is not marked on the ground. There is approximately a 1m drop in levels from the northern boundary of the site to the southern boundary.

2.0 Proposed Development

- 2.1. The proposed development comprises the following:
- construction of a three-bedroom detached single-storey dwellinghouse with a stated gross floor area (GFA) of 97sq.m;
 - construction of a single-storey garage with a stated GFA of 62sq.m;
 - provision of an on-site wastewater treatment system and percolation area;
 - provision of a vehicular entrance/egress off a private access road, landscaping and boundary treatments.
- 2.2. In addition to the standard planning application documentation and drawings, the application was accompanied by an EPA site characterisation form, a land registry map and a supplementary application form for a dwelling in a rural area, as well as correspondence and documentation addressing the applicant's 'rural-generated housing need'.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority issued a notification of a decision to refuse permission for two reasons, which can summarised as follows:

R1: this residential development would materially contravene the 'RU – Rural' land-use zoning objective for the site, would be contrary to Objective RF39 of the Development Plan, which only allows for one additional house per family in this area, whereas a house was previously permitted to the respective family;

R2: the applicant has not demonstrated that they have a genuine rural-housing need in line with Development Plan standards for 'RU – Rural' lands.

3.2. Planning Authority Reports

3.2.1. Planning Report

The report of the Planning Officer (October 2017) reflects the decision of the Planning Authority. The Planning Officer noted the following:

- substantive evidence to demonstrate that the applicant has a rural-generated housing need has not been submitted with the planning application;
- a member of the applicant's family has already been granted permission for a dwelling on the family lands under Fingal County Council (FCC) Ref. F02A/0619 and, therefore, the applicant cannot qualify for an additional house in this location, as it would be contrary to the 'RU-Rural' land-use zoning objective for the area and the terms set out under Objective RF39 and Table RF03 of the Development Plan.

3.2.2. Other Technical Reports

- Water Services - no objection, subject to conditions.
- Transportation Planning - no objection.

3.3. Prescribed Bodies

- Irish Water - no objection, subject to conditions.

3.4. Third-Party Submissions

3.4.1. None.

4.0 Planning History

4.1. Appeal Site

4.1.1. The following planning application encompassed an area that includes the appeal site:

- FCC Ref. F97A/0310 – Permission granted to David McDonnell in September 1997 for a detached house served by a biocycle treatment system. This house is stated to be applicant's family home, located approximately 50m to the south of the appeal site.

4.2. Surrounding Sites

4.2.1. There have been a number of planning applications relating to neighbouring lands, including the following relevant application:

- FCC Ref. F02A/0619 – Permission granted to David McDonnell in November 2002 for a detached house with septic tank and percolation area. This house is stated to be the applicant's brother's home and is located approximately 100m to the northwest of the appeal site.

4.2.2. The Board has recently granted permission for the following neighbouring application in Oldtown village:

- ABP Ref. 300045-17 / FCC Ref. PD/16/340 – Permission granted in March 2018 for 14 dwellings on a site 180m to the northeast of the appeal site at The Orchard.

5.0 Policy Context

5.1. National Guidelines

National Planning Framework – Project Ireland 2040

- 5.1.1. Objective 19 of the National Planning Framework outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area.

Sustainable Rural Housing Guidelines for Planning Authorities 2005

- 5.1.2. The Guidelines provide criteria for managing rural housing requirements, whilst achieving sustainable development. Planning Authorities are recommended to identify and broadly locate rural area typologies that are characterised as being under strong urban influence, stronger rural areas, structurally weak, or made up of clustered settlement patterns. The appeal site is located in an area under strong urban influence, as set out directly below under Section 5.2.3.

5.2. Fingal Development Plan

- 5.2.1. The policies and objectives of the Fingal Development Plan 2017-2020 are relevant. The site is outside the area covered by the Oldtown Local Area Plan 2012-2022 and the Oldtown Village Development Framework Plan & Design Guidance 2011.
- 5.2.2. The site is zoned 'RU – Rural' in the Development Plan with a stated objective 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 stated vision for these 'RU-Rural' lands is to protect and promote the value of the rural area of the County. Residential development is 'permitted' on 'RU-Rural' zoned land, subject to compliance with the Rural Settlement Strategy. Section 2.7 of the Plan sets out the County Settlement Strategy and this includes Objective SS07, which aims to only permit housing in the countryside, where the applicant can demonstrate compliance with criteria for rural housing.
- 5.2.3. Section 5 of the Plan sets out that the Fingal area is considered to be an area under 'strong urban influence'; thereby only persons with a rural-generated need for

housing will be accommodated on 'RU-Rural' and other lands in the countryside, while persons with an urban-generated housing need will be directed to towns and villages. The Plan provides definitions for the categories of persons with a genuine rural-generated housing need, including those active in farming. For persons who are not actively engaged in farming, Objective RF39 of the Plan restricts new rural dwellings in areas with zoning objective 'RU-Rural', to suitable sites and where the applicant meets the 'rural-generated housing need' criteria set out in Table RF03. Table RF03 includes (i) persons with close family ties, (ii) persons in employment predominantly serving the rural community for 15 years prior, (iii) persons with exceptional health circumstances and (iv) persons with a bona fide rural business. For categories (i), (ii) and (iii) above the criteria provides a further restriction of permission where a rural dwelling has already been granted planning permission to a family member since 19th day of October, 1999. The Development Plan also outlines that verifiable documentary evidence to demonstrate compliance with Objective RF39 must be submitted with an application, including a sworn affidavit by the applicant stating that the applicant conforms to the requirements of the objective.

- 5.2.4. Sections 5.2 and 12.6 of the Plan outline design criteria for housing in the countryside and state that newly constructed homes will be directed, where possible, to sites that are located adjacent to existing homes or farmyards belonging to the family of the owner of the new home. Such sites should be served by a single entrance for both the existing and the proposed development. Other relevant objectives include Objectives RF66 & DMS54 relating to the need for appropriate standards to be achieved for on-site wastewater treatment systems.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first-party appeal was lodged against the decision of the Planning Authority. The issues raised can be summarised as follows:

- the applicant has provided evidence to substantiate that they have resided in the area for over 15 years;

- an additional letter from the applicant accompanies the appeal and outlines the applicant's personal reasons for wanting to reside close to their parents;
- the previous permission (FCC Ref. F02A/0619), which was granted to a brother of the applicant is now over 15 years old and was not speculative, given the fact that he continues to reside with his family in the house granted under the permission;
- the applicant should not be restricted a home on the site by virtue of an 18-year moratorium on planning arising from Development Plan objectives. It would appear far more reasonable to reduce the current '18-year moratorium' to 15 years, in order to align with the 15-year residency required when demonstrating 'close-family ties'. Furthermore, it would be unreasonable for the applicant to have to wait three more years before they can reside close to their family home;
- technical rationale for refusing to grant permission did not arise during the course of the Planning Authority's assessment and the subject site would be suitable for a house.

6.1.2. A sworn affidavit stating that the applicant has lived at O'Brien's Lane, Oldtown, for the last 15 years, supplemented by the aforementioned personal letter, accompanied the grounds of appeal.

6.2. Planning Authority Response

6.2.1. The Planning Authority response to the grounds of appeal can be summarised as follows:

- stance of the Planning Authority remains as per the decision issued;
- Table RF03 of the Plan only permits one house per family based on close family ties. A family member was previously granted planning permission in 2002 (under FCC Ref. F02A/0619) and this permission was implemented;
- Substantive further information has been provided to demonstrate that the applicant complies with the 15-year residency requirement under Objective RF39.

6.3. Observations

6.3.1. None.

7.0 Assessment

7.1. Introduction

7.1.1. The proposed development is for a single-storey three-bedroom detached dwellinghouse and a garage, to be served by an on-site wastewater treatment system, on a rural site to the west of Oldtown village in north County Dublin. The site would be accessible from a private laneway that connects the Naul Road (R122 regional road) with O'Brien's Lane, a narrow country lane. The proposed house would be served by the existing accesses off the private lane onto the public road and would not result in a traffic hazard. I am also satisfied that the siting and design of the proposed house in the subject rural landscape would generally conform to the siting and design criteria set out in the Fingal Development Plan 2017-2023 and would be acceptable.

7.1.2. Consequently, I consider the substantive planning issues arising from the grounds of appeal and in the assessment of the application and appeal, relate to the following:

- Rural Housing Policy;
- Wastewater Treatment.

7.2. Rural Housing Policy

7.2.1. Reason for refusal No.1 of the Planning Authority decision stated that, as a member of the applicant's family had already been granted permission in November 2002 for a house on the family lands (under FCC Ref. F02A/0619), an additional house cannot be permitted based on 'close family ties', as it would be contrary to the 'RU-Rural' land-use zoning objective for the site and the terms of Objective RF39 of the Development Plan. In response the applicant considers that it would be unreasonable for the applicant to be restricted permission for a home close to their family by virtue of an 18-year moratorium on planning arising from the standards set out in the Development Plan.

Area Type

- 7.2.2. Objective 19 of the National Planning Framework (NPF) outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area. Section 5.2 of the Development Plan sets out the Planning Authority's planning strategy with regard to 'rural settlement'.
- 7.2.3. The site is zoned 'RU – Rural' in the Development Plan with a stated objective 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'. In addressing appropriate locations for rural housing, the Development Plan sets out that the entire county area is under strong urban influence and that residential development on 'RU-Rural' lands is permitted. However, permission for a house on 'RU-Rural' zoned lands will only be granted for persons with a genuine rural-generated need for housing, strictly in accordance with the terms set out in the Development Plan. Objective SS07 of the Plan aims to restrict housing in the countryside to persons who can demonstrate compliance with criteria for rural housing, as set down in the Development Plan.

Housing Need

- 7.2.4. The Plan provides a definition of the categories of persons with a genuine rural-generated housing need, which in broad terms would include persons involved in the family farm, persons with close-family ties, persons in employment related to the community, persons with exceptional health circumstances and persons with a bona fide rural business. The applicant is stated to work as an air hostess and the grounds of appeal assert that the applicant complies with the Development Plan, as they have 'close family ties to the Fingal rural community, as defined in Table RF03 paragraph (i)' of the Development Plan. Table RF03 of the Plan sets out criteria for eligible applicants from the rural community for planning permission for a new rural house and states the following under paragraph (i):

'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.'

7.2.5. The Development Plan outlines that verifiable documentary evidence is required to demonstrate compliance with Objective RF39, including a sworn affidavit by the applicant stating that the applicant conforms to the requirements of the objective. Reason for refusal No.2 of the Planning Authority decision stated that the applicant has not demonstrated that they have a genuine rural-housing need in line with criteria set out in the Development Plan. Documentation has been submitted by the applicant, as part of the application and appeal. Accompanying the grounds of appeal, is a sworn affidavit stating that the applicant has lived at O'Brien's Lane, Oldtown, for the last 15 years, supplemented by a personal letter. A supplementary application form for a dwelling in a rural area, a copy of a Birth Certificate for the applicant (with date of birth in 1987) and a school report from St. Mary's National School, Oldtown, dating from 2000 were submitted with the planning application to verify the applicant's address in 1987 and 2000. The evidence submitted would suggest that the applicant has close family ties with the area. While I recognise that the documentation claims that the applicant resided in the O'Brien's Lane area and a sworn affidavit has been submitted, this documentation is not supported by sufficient specific secondary or primary evidence to substantiate that the applicant has lived in the area for a continuous 15-year period, as stipulated in paragraph (i) of Table RF03. Consequently, the information provided by the applicant does not fully substantiate that they have a genuine rural-housing need, as per the criteria outlined within paragraph (i) of Table RF03 of the Plan.

7.2.6. The Location Map submitted (Sheet 1 of 2 - Drawing No. 14.66/PI/001) and documentation submitted with the application identifies the applicant's family home, approximately 50m to the south of the appeal site, and the applicant's brother's home, approximately 100m to the northwest of the appeal site. As recognised by the Planning Authority, as well as within the application and grounds of appeal, permission for the applicant's brother's house was granted in November 2002 under

FCC Ref. F02A/0619. Consequently, this precludes another family member being granted permission for a house in the area based on the criteria outlined in paragraph (i) of Table RF03 of the Plan.

7.2.7. Within 'RU-Rural' zoned lands, the Development Plan outlines that rural housing developments will only be facilitated where the applicant can substantiate through verifiable documentation that they have a rural-generated local housing need. The applicant cannot be reasonably considered to fully adhere to the subcategory of persons with a rural-generated housing need, as defined under paragraph (i) of Table RF03 of the Plan. While the applicant may be originally from this area, they have not fully demonstrated that they have lived in the area for a continuous 15-year period. Furthermore, a family member has previously been permitted a house in the area subsequent to the 19th day of October 1999. Consequently, I consider that the applicant does not conform to the criteria set out under paragraph (i) of Table RF03 applying to 'eligible applicants from the rural community for planning permission for new rural housing'. Accordingly, the applicant has not demonstrated a genuine rural-housing need and the proposed development would be contrary to Objectives SS07 and RF39 of the Development Plan. The proposed development should be refused permission for this reason.

7.2.8. The decision of the Planning Authority outlines that, if permitted, the proposed development would materially contravene the 'RU-Rural' zoning objectives for the area and more specifically, Objective RF39 and the criteria set out in Table RF03 of the Development Plan. Consequently, should the Board be minded to grant permission for the proposed development, Section 37(2) of the Planning and Development Act 2000, as amended, must be considered. Section 37(2) states that if the Planning Authority have decided to refuse permission on the grounds that a proposed development would materially contravene the Development Plan, the Board may only grant permission in certain circumstances. As stated 'residential' development is permitted on 'RU-Rural' zoned land, subject to compliance with the Rural Settlement Strategy. Objective RF39 and table RF03 aim to restrict housing to persons with a rural-generated housing need and they are not prescriptive in nature, nor are they specific to the appeal site. While the proposal would not comply with the terms of the stated objective and table, I do not consider that the proposed development, if permitted, would materially contravene the Development Plan.

7.3. Wastewater Treatment

- 7.3.1. Objectives RF66 and DMS54 of the Development Plan require on-site treatment systems to meet the appropriate standards, which would include those contained within the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Houses. The proposed house would be served by a packaged wastewater treatment system and a percolation area with a polishing filter. While the location of the proposed system and percolation area were noted, but not illustrated, on the proposed site layout plan (Drawing No. 14.66/PI/003) submitted with the application, they were illustrated on a drawing included within the Site Suitability Assessment & BRE Digest 365 Report submitted with the application. The drawing within the report includes some minor discrepancies when compared with the proposed site layout plan drawing, including the proposed house footprint and the garage location. The report drawing illustrates the proposed wastewater treatment system, percolation area and a soakpit to the south of the proposed house. In commenting on the planning application, the Water Services section of the Planning Authority stated that they had no objection to the grant of planning permission for the proposed development, and that 'no foul drainage is to discharge into the surface water system under any circumstances'. This would be a standard condition in the case of developments proposed to connect to piped environmental services and not developments where an on-site wastewater treatment systems is proposed, as in the subject case.
- 7.3.2. There are four houses within 250m of the site and the nearest watercourse is the Daws River, 110m to the south. The Site Suitability Assessment Report notes the potential targets near the site as groundwater and wells. The proposed house would be served by a private well according to the application form submitted. The location of the proposed well and its associated pipe network, and any other wells, are not identified within the application. Reference is made on the Location Map Sheet 2 of 2 (Drawing No. 14.66/PI/002) to a 'well house' approximately 40m to the south of the appeal site adjacent to an existing outbuilding serving the applicant's family home, but this well house did not appear to be in situ during my site visit. Consequently, it is not possible to comprehensively assess, whether or not the proposed system complies with separation distances to key features, such as the proposed well.

- 7.3.3. The report submitted states that a trial hole was examined in May 2017 and the water table was encountered at a depth of 1.4m. Percolation tests undertaken revealed an average T-value of 35 and an average P-value of 28. The EPA Code of Practice states that where the T-value is between 3 and 50, as per the subject assessment, the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. Where the P-value is between 3 and 75, the Code outlines that the site is suitable for a secondary treatment system with polishing filter at ground surface or overground.
- 7.3.4. The percolation tests and trial hole were undertaken approximately 16m to the west of the proposed percolation area, on the opposite side of the private road and not within the appeal site. I recognise that Section 6.2.3 of the EPA Code recommends that the percolation test holes should be located adjacent to, but not within, the proposed percolation area. I would suggest a more standard and orthodox approach would be to carry out the tests adjacent to the percolation area and within the site.
- 7.3.5. While I have some reservations regarding the details provided, given the results of the tests undertaken, the consistency between the surface ground conditions on the appeal site and the adjacent area subject of the percolation tests and the scale of the actual appeal site (c.0.3ha), I am satisfied that the proposed wastewater treatment system and percolation could be reasonably accommodated on site. Wastewater treatment was not raised within the grounds of appeal, therefore, should the Board disagree with my assessment on this matter, they may wish to treat this as a new issue.

8.0 Appropriate Assessment

- 8.1. The appeal site is 9km west of Rogerstown Estuary candidate Special Area of Conservation (cSAC) (Site Code: 000208), 9.7km northwest of Malahide Estuary cSAC (Site Code: 000205), 9.8km west of Rogerstown Estuary candidate Special Protection Area (cSPA) (Site Code: 004015) and 9.9km northwest of Broadmeadow/Swords Estuary cSPA (Site Code: 004025). An Appropriate Assessment Screening Report was not submitted with the application.
- 8.2. There is no direct or indirect source-pathway-connector between the appeal site and the above designated sites that are within 15km. Having regard to the nature and

scale of the proposed development, the nature of the receiving environment, and/or proximity to the nearest European site, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

9.0 Recommendation

9.1. I recommend permission be **refused** for the reasons and considerations set out below.

10.0 Reasons and Considerations

1. The site of the proposed development is located in a rural area under urban influence and within lands with a zoning objective 'RU-Rural' in the Fingal Development Plan 2017 – 2023, where objectives SS07 and RF39 aim to restrict housing to specified categories of persons who can establish that they have a rural-generated housing need. Based on the documentation submitted with the application and appeal, it is considered that the applicant has not demonstrated that they meet the criteria for a rural-generated house under the provisions set out in Table RF03 of the Development Plan, whereby the applicant must have lived in the family home identified on the application or within the locality of the family home for at least 15 years and, where an additional home to the applicant's family would be restricted by virtue of a family member having previously been permitted a house in the area subsequent to the 19th day of October 1999. The proposed development would be contrary to Objectives SS07 and RF39 of the Development Plan, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Colm McLoughlin
Planning Inspector

24th April 2018