



An  
Bord  
Pleanála

## Inspector's Report ABP-302249-18

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<b>Development</b>	Permission for the construction of new detached dormer style dwelling and all associated site works
<b>Location</b>	Ring Common, Naul, Co Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F18A/0262
<b>Applicant</b>	Darren Hennessy
<b>Type of Application</b>	Planning Permission
<b>Planning Authority Decision</b>	Refusal
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Darren Hennessy
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	05/10/2018 and 20/10/2018
<b>Inspector</b>	L.W. Howard

## 1.0 Site Location and Description

- 1.1. Located within rural North County Dublin, the stated 0.2187ha application site within the Townland of 'Ring Commons', is c.4.2km east of Naul, and c.4.3km southwest of Balbriggan.
- 1.2. The application site is generally rectangular in shape, and comprises of a subdivision from the larger existing agricultural field. Topographically, the site is generally flat.
- 1.3. At present, the sites southern (ie. road frontage) and eastern (lateral) boundaries comprise hedgerows, scattered trees and treelines. The remaining northern (rear) and western (lateral) site boundaries comprise of a wooden post and wire 'bonnock' fence, which extends to the sites eastern boundary. To the immediate east of the application site, is a small area of scrub.
- 1.4. The site's southern frontage onto the local rural road is c.55.5m, with a depth of c.40.5m. An existing agricultural access directly off the local rural road is located proximate the site's southwestern corner. At present this access is blocked with wooden pallets.
- 1.5. The primary land use locally may be described as agricultural. Improved agricultural grassland and tillage land are the dominant habitats. Other habitats locally include wet grassland, hedgerows, hedgerows, treelines and watercourses.
- 1.6. There are no drains or streams within or immediately adjacent to the application site.
- 1.7. Public road geometry passed the application site frontage is straight, with a gentle incline from east to west. Sightline visibility is currently restricted due to the overgrown frontage. The road surface is in good condition.

## 2.0 Proposed Development

2.1. Permission is being sought to erect a new detached dormer style dwellinghouse on a stated c.0.2187ha site, as follows :

- a c.224m<sup>2</sup>, 4-bedroom dormer style dwelling positioned centrally on site.
- with a generally rectangular floorplan (minor c.2.5m, single storey projection to west facing gable end), the house is c.14.5m wide (c.17.00m with extension), c.14.00m deep (including the porch), with roof ridge height c.7.492m.
- Glazing proposed in all elevations. Rooflights proposed on the front (south) and rear (north) roof planes.
- Materials finishes indicated as a render finish in off-white colour, and a natural slate roof.
- Accommodation, living space includes – a porch, kitchen / dining area, utility room, lounge, playroom, 4no. bedrooms (1no. en-suite) and a family bathroom.
- set back c.12.84m from southern site boundary frontage onto the local road. Further setbacks from the sites western and eastern lateral boundaries, are c.17.78m and c.19.84m respectively. Set back from the northern, rear site boundary is c.16.00m.
- the vehicular entrance adjacent the site's south-western corner, is off the local road. A driveway is proposed linking the entrance off the local road with the house. On-site car parking space proposed to the front of the house.
- the 'wastewater treatment system and percolation area', and 'soakaway' are to be located to the rear of the house.
- all associated site works.

2.2. Accompanying documents

- Supplementary application form for a rural house, together with Rural Housing Policy compliance supporting documentation.
- 'Visual Impact Statement' – Paul Sheehy
- Letter from applicant's mother – Ms. M. Hennessy (undated), affirming residency in the 'family home' since 1999 (ie. adjacent and to the west of the application site).

- 'Site Suitability Assessment and BRE Digest 365 Report' – 'Percolation Tests.ie' (02/05/2018).
- Letter outlining proposed upgrade to the design of the polishing filter to a 'tertiary sand filter system' – 'Percolation Tests.ie' (02/08/2018).
- 'Appropriate Assessment Screening Statement in line with the requirements of Article 6(3) of the EU Habitats Directive' – 'Rowan Engineering Consultants Ltd. (31<sup>st</sup> July 2018).

## 3.0 Planning Authority Decision

### 3.1. Decision

Decision to refuse planning permission, for 4no. stated Refusal Reasons, as follows

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1. Having regard to the application site location within the Inner Protection Area of the Bog of the Ring Groundwater Protection Zones, as set out in the report titled 'Bog of the Ring Ground Water Protection Zones, dated March 2005, prepared by the Geological Survey of Ireland, the proposed development would result in the contamination of the groundwater. The proposed development would therefore be prejudicial to public health, and would materially contravene Objective RF67 of the Fingal County Development Plan 2017-2023, which seeks to 'implement the recommendations of the Ground Water Protection Scheme'. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
2. The applicant did not clearly demonstrate residency in the local area for a period of 15 continuous years, in compliance with the criteria for establishing a genuine need to live in the rural area, set out at 'Table RF03' of the Fingal County Development Plan 2017-2023. In the absence of such, the proposed development would be contrary to the proper planning and sustainable development of the area.
3. Sightline visibility of at least 85m in both directions from the proposed site entrance, has not been adequately demonstrated by the applicant. In the

absence of details demonstrating adequate sightline provision, the proposed development would endanger public safety by reason of traffic hazard.

4. Applicant's failure to provide an 'Appropriate Assessment Screening Report', prevented the planning Authority ability to undertake an 'Appropriate Assessment' of the proposed development. In the absence of such details therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The key planning issues considered as follows :

##### Principle of the Proposed Development

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

##### Compliance with the Rural Settlement Strategy

- Located on "RU" Rural zoned lands, the applicant is required to demonstrate compliance with the Rural Settlement Strategy.
- The Fingal County Rural Settlement Strategy seeks to ensure the vitality and regeneration of rural communities by facilitating those with a genuine rural generated housing need, while directing urban generated housing need to towns and villages.
- Five (5no.) categories of 'rural generated housing need' exist, under which applications for one-off rural housing can be made. The criteria substantiating each of the 5no. categories are further established.
- The 5no. categories are :
  - 'actively involved in the family farm as defined in Objective RF38'
  - 'close family ties'
  - 'employment related to the Community'
  - 'exceptional health reasons'
  - "'bone fide" business'

- the applicant’s motivation is under the ‘Close Family Ties’ category. The eligibility criteria are set out in Table RF03, paragraph (i) of the County Development Plan 2017-2023. Restricted to “one member of a rural family”, the applicant is required to substantiate ‘close family ties’ by way of providing documentary evidence that he –
  - is a close member of the family of the owners of the family home, and
  - has lived in the family home identified on the application, or within the locality of the family home for at least 15 years.
- In substantiation of compliance, the applicant submitted –
  - a ‘Supplementary Application Form for a Dwelling in a Rural Area’. In this, applicant stated that :
    - he has been resident in the area from 1999, to date (ie. 19 years).
    - his mother was granted planning permission for a dwelling at Ring Commons under **Reg.Ref.No.F07A/0801**.
  - a letter from applicant’s mother, supporting her son’s application.
- Having regard to the applicants documentation submitted, consider that the 15 years residency requirement in the local rural area, as set out at para.(i) of Table RF03 has not been established.
- Therefore, the applicant has not complied with the Rural Settlement Strategy, as set out in the Fingal Development Plan 2017-2023.

#### Site Sensitivity

- Located within rural County Fingal, the application site is encumbered with several ‘designations’, including –
  - Highly Sensitive landscape
  - Ecological Buffer Zone
  - Location within the ‘Inner protection Area’ of the ‘Bog of the Ring’ Groundwater Protection Zones.
  - Location to the east and South of the ‘Bog of the Ring’ proposed ‘Natural Heritage Area’ which is a ‘water Framework Directive Register of Protected Areas (WFDRPA) site.
  - County Development Plan 2017-2023 identifies the ‘Bog of the Ring’ as a “Protected Area of National Importance”, and states that “... Council

will normally only grant permission where it is clearly demonstrated that a proposal will have no significant adverse impact on the habitats and 'species of interest' in the designated area and its ecological integrity".

- Green Infrastructure Map – Objective No.24  
“prepare and implement a ‘management plan’ for the ‘Bog of the Ring’ proposed Natural Heritage Area (NHA), and the surrounding area.
- Map Based Local Objective No.7  
“Develop a management plan for the protection and conservation of the Bog of the Ring, within a defined study area as indicated on the Development Plan map, in conjunction with local lands owners and stakeholders including the National Parks and Wildlife Service and the relevant Departments”.
- **Objective NH16**  
Protect the ‘ecological’ integrity of –
  - proposed Natural Heritage Areas (pNHAs)
  - Natural heritage Areas (NHAs)
  - Statutory Nature Reserves
  - Refuges for Fauna
  - ‘Habitat Directive’ Annex 1 sites
- **Objective NH17**  
Ensure that development does not have a significant adverse impact on –
  - proposed Natural Heritage Areas (pNHAs)
  - Natural Heritage Areas (NHAs)
  - Statutory Nature Reserves
  - Refuges for Fauna
  - Habitat Directive Annex I sites and Annex II species contained therein, and on rare and threatened species including those protected by law and their habitats.
- **Objective NH18**
  - Protect the functions of the ecological buffer zones, and
  - Ensure proposals for development have no significant adverse impact on the habitats and species of interest located therein.
- Reference applicant’s ‘Visual Impact Assessment’ included with planning application documentation. The Assessment concludes the proposed

development will have a largely neutral impact on the surrounding area, and that the overall design and character of the proposed dwelling is such that it integrates into the local landscape.

#### Development Plan Standards

- Quantitative Standards
  - The requirements set out at Tables 12.1 and 12.3 of the County Development Plan 2017-2023, have been exceeded in this application.
- Open Space
  - Having regard to the size of the application site, compliance with Objective DMS87 regarding 'open space standards' is achieved.
- Overall design, scale and bulk of the proposed development, considered as acceptable.

#### Integration and Impact on Visual and Residential Amenity of the Area

- Having regard to the size of the application site, and to the design of the proposed development, consider that no negative impact on the visual or residential amenities of the area, will result.
- Further, no issues of overbearing, overshadowing and overlooking will arise.

#### Water Services Infrastructure and Drainage

- Note Treatment Plant at 'Bog of Ring', which –
  - produces on average 3.15 mega litres per day
  - extracts groundwater from wells, and supplements the water supply of the northern part of the County.
- reference opinion of both 'Irish Water' and 'Water Services Department' (ie. 'water' and 'drainage') that the proposed development be refused planning permission, on the basis that –
  - the proposed development is located within the Inner Protection Area of the Bog of the Ring Groundwater Protection Zones, as set out in the report – "Bog of the Ring – Groundwater Protection Zones" dated March 2005, prepared by the Geological Survey of Ireland, in collaboration with Fingal County Council.



- Reference delineation of the 'Inner protection Area', so as to protect against the effects of potentially contaminating activities that may have an immediate influence on 'water quality' at the source, in particular microbial contamination.

### Transportation Issues

- Reference Transportation Planning Section opinion that –
  - the sightline drawings submitted by the applicant is incorrect
  - sightlines of 150m in either direction are not achievable, from 2.4m set-back
  - further information (F.I.) necessary re. revised plans demonstrating sightlines of at least 85m in both directions from the site entrance.
  - the removal / set back of hedgerows to both sides of the proposed entrance necessary in order to achieve required sightlines.
  - any encroachment of sightlines onto 3<sup>rd</sup> party lands, leading to substandard sightline visibility, may result in a refusal on the grounds of traffic hazard, due to inability to interfere with 3<sup>rd</sup> party lands.

### Impact on Natura 2000 Sites

- No 'Appropriate Assessment Screening report' included with application documentation submitted.
- Having regard to the 'sensitive' nature of the application site, with several designations (see references above), the Planning Authority held the view that in the absence of 'Appropriate Assessment' Screening, it is not possible to conclude the impact, or not, the proposed development might have on Natura 2000 sites.

### Conclusion

- the proposed development is located within the Inner Protection Area of the Bog of the Ring Groundwater Protection Zones, as set out in the report – "Bog of the Ring – Groundwater Protection Zones" dated March 2005, prepared by the Geological Survey of Ireland, in collaboration with Fingal County Council –

- Applicant has not demonstrated compliance with the ‘Rural Settlement Strategy’, regarding the provision of a dwellinghouse on lands zoned “RU”, as set out in County Development Plan 2017-2023.
- Applicant has not satisfactorily demonstrated that the required sightlines can be achieved, to serve the proposed development.
- Applicant has not provided an ‘Appropriate Assessment Screening Report’, in relation to the planning application.

### 3.2.2. Other Technical Reports

Water Services Section Refusal recommended.

Transportation Planning Section Further Information (F.I.) recommended.

### 3.3. Prescribed Bodies

Irish Water Refusal recommended.

### 3.4. Third Party Observations

None

## 4.0 Planning History

4.1. No relevant planning history on the application site.

4.2. The following planning history is apparent in the vicinity of the application site :

**17A/0638** Permission granted – Paul Gaffney, for new dormer style dwellinghouse accessed via existing entrance, new wastewater treatment system and percolation area along with associated site works, all at Ring Commons, Naul, Co. Dublin (ie. to the northwest of the application site).

**F97A/0801** Permission granted – Michelle Beresford, for a single storey dwellinghouse and septic tank, all at Ring Commons, Naul, Co. Dublin (ie. to the north of the application site, the applicants ‘family home’).

## 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. Fingal County Development Plan 2017-2023

#### **Ch5 Rural Fingal**

##### **S5.2 Fingal's Rural Settlement Strategy**

##### **Settlement Strategy**

##### **Housing in the Countryside**

**Objective RF26** To facilitate those with a genuine rural generated housing need to live within their rural community.

##### **Rural Generated Housing Need**

*Table RF01* clarifies the maximum number of houses permitted per 'existing house'.

*Table RF02* provides an eligibility summary.

**Objective RF30** Permit a maximum of two (2no.) incremental house for those who meet the relevant criteria within lands zoned "RU", plus one (1no.) house for a person with exceptional health circumstances, plus one (1no.) where exceptional farming circumstances prevail.

**Objective RF33** Single houses granted permission within lands zoned “RU”, will be subject to an occupancy requirement.

**New Housing for the Rural Community other than for those who are Actively Engaged in Farming :**

**Objective RF39** Permit new rural dwellings in areas zoned “GB”, on suitable sites where the applicant meets the criteria set out in *Table RF03*.

*Table RF03* Criteria for ‘eligible applicants’ from the rural community, for planning permission for ‘new rural housing’ (see copy attached), as follows –

(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 19<sup>th</sup> 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.

These detailed criteria include a requirement for supporting documentation and evidence demonstrating compliance with Objective RF39.

**Layout and Design for Housing in the Countryside**

- Aim to limit visual impact of new houses upon the countryside.
- The hedgerow network is a valuable natural resource, and should be protected. Whilst loss sometimes unavoidable, this should be minimised, and where removed should be compensated and replaced on site.
- Retention of trees and hedgerows is critical in protecting the positive attributes of landscape character and heritage features, and providing for an attractive living environment.
- Requiring high standards for siting and design, ensures the impact of any proposed house on the landscape is minimised
- High quality contemporary design reflecting the traditional will be supported. Dwellings suburban in design or dominant, intrusive, or incongruous in a rural setting, will not be permitted.
- Layout and design for new dwellings to prevent the increase of new entrances onto public roads.
- Preference is for the sharing of entrances with existing houses / farmyards belonging to their family or the owner of the new home.

**Objective RF59** Ensure regard to Chapter 12 – Development Management Standards, in the design and layout for new dwellings.

**Objective RF61** New dwellinghouses in the rural area to be sited at a location in close proximity to the family home

- where the drainage conditions can safely accommodate the cumulative impact of such clustering, and
- where such clustering will not have a negative impact on the amenities of the original house.

Where clearly demonstrated not available, permit new dwelling to be located on an alternative site which is within 2km from the 'family home'.

**Objective RF62** Ensure design of entrances and front boundary treatment is sensitive to the rural setting.

Block walls and ornamental features are discouraged. Native hedging to be utilised where appropriate.

**Objective RF63** Ensure retention of hedgerows and other distinctive boundary treatments in rural areas.  
Where removal unavoidable, provision of same type will be required

### **Rural Drainage**

- An increasingly critical issue, as pressure for single houses in the countryside increases.
- Use of 'on site waste water treatment systems' has –
  - the potential to negatively impact on ground water quality, and
  - the ability to breach statutory obligations to prevent deterioration in the status of any waters under the '*Water framework Directive*'.

**Objective RF66** Ensure compliance with the requirements for on-site treatment systems, and / or the EPA Code of Practice.

**Objective RF67** Implement the recommendations of the Ground Water Protection Scheme

## **Ch7 Movement & Infrastructure**

### **S7.2 Water Services**

#### **Drinking Water Supply and Private Wells**

**Objective DW03** Protect both ground and surface water resources and work with Irish Water to develop and implement Water Safety Plans to protect sources of public water supply and their contributing catchment.

#### **Foul drainage and Wastewater Treatment**

**Objective WT06** Facilitate development in unserved areas only where it is demonstrated to the satisfaction of the Planning Authority that the proposed waste water treatment system is in accordance with the relevant EPA Codes of Practice.

## **Ch11 Land Use Zoning Objectives**

### **S11.8 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’ land use permitted in principle, subject to compliance with the ‘Rural Settlement Strategy’.

## **Ch12 Development Management Standards**

### **S12.6 Design Criteria for Housing in the Countryside**

#### **Table 12.4 ‘Design Guidelines for Rural Dwellings’**

##### **Surface & Wastewater Treatment**

- Domestic wastewater treatment plant and percolation areas must comply with the requirements of the EPA’s ‘Code of Practice’ -2009, or other superseding Standards.

**Objective DMS53** Ensure compliance with the requirements for on-site treatment systems, and / or the EPA Code of Practice

**Objective DMS54** Development requirements where on site treatment systems are proposed are :

- a minimum site area of 0.2ha
- prevent possible pollution of groundwater and surface water via :
  - design and installation of the proposed proprietary treatment plant in accordance with an appropriate harmonised Standard.
  - proposed plant and secondary treatment to be located in

accordance with the EPA 'Code of Practice' – 2009.

- applicant to enter into a maintenance agreement for the proposed treatment plant
- a site characterisation test form to be completed by a suitably qualified and competent person. Council may require additional tests under its supervision.
- pending installation, applicant required to lodge a monetary deposit with the Council. Deposit to be refunded on receipt of a Certificate confirming that all necessary works have been carried out in accordance with manufacturer's instructions.

### 5.3. Natural Heritage Designations

5.3.1. Five (5no.) Natura 2000 designated sites are apparent within 10km of the application site. These sites are –

- River Nanny Estuary and Shore (**Code – SPA 004158**), c.7.7km north
- Skerries Islands (**Code – SPA 004122**), c.8.7km east
- Rockabill to Dalkey Island (**Code – SAC 0030000**), c.10.6km east
- Rogerstown Estuary (**Code – SAC 000208**), c.8.9km south
- Rogerstown Estuary (**Code – SPA 004015**), c.9.1km south

## 6.0 The Appeal

### 6.1. Grounds of Appeal

As motivated and set out by the 1<sup>st</sup> party appellant –

#### 6.1.1. Refusal Reason No.4



- In response, the applicant has included an Appropriate Assessment ‘Screening Report’, with the appeal submission documentation
- Point out that the applicant engaged with the Planning Authority in pre-application consultations, and an ‘Appropriate Assessment Screening Report’ was not requested.
- Confirm applicant submitted information relating to each point discussed in pre-planning consultations. Reference initial ‘cover’ letter dated 15-05-2018 in this regard (copy on file).
- Point out that an ‘Appropriate Assessment’ was not required for a similar development recently, only a few hundred metres away from the application site.
- Applicants consultant ‘ecologist’ opinion that the report “was entirely unnecessary”.
- Notwithstanding, the report was completed by ‘Rowan Engineering Consultants LTD. Copy included with appeal submission.

#### 6.1.2. Refusal Reason No.2

- Having regard to stated Refusal Reason No.2, applicant comments –
  - a Supplementary Application Form was lodged with the planning application,
  - a ‘Statutory Declaration’ was provided, as the applicant grew up on the adjacent site.
- Confirm planning permission granted to the applicant’s mother – Michelle Beresford in 1997. The house was constructed in late 1998, and the family moved in in 1999. Include several family photographs of the applicant – Darren Beresford, in the family home, adjacent the application site. These demonstrate applicant has grown up at the adjacent family home, and proof he has been at this address – Ringcommons, The Naul, Co. Dublin, for over 15 years.
- Letter included from Finglas Credit Union Ltd. confirming applicants change of address in 2000, which post-dated the actual move in 1999.

#### 6.1.3. Refusal Reason No.3

- Having regard to stated Refusal Reason No.3, applicant comments –
  - the Departmental Transportation Planning Section report requested ‘further information’.
  - A refusal was not recommended.
- Having regard to the Transportation Planning Section requirement for sightlines of 85m in both approach directions, from the proposed entrance, emphasise that with some trimming of the hedges in the vicinity of the entrance, 85m can easily be achieved.
- Clarify that as the treeline / hedgerow along both of the site frontages on either side of the proposed entrance, are behind the setback required (ie. 2.4m), if these hedges were trimmed to a height of approximately 1.6m, it will allow a clear view in either direction from a car.
- Emphasise that the overgrowth presently characterising the site frontage, gives a false visual impression of the true site boundary frontage set back. Rather, the true line of the original hedgerow along the application site frontage can be read in the positioning of the ESB poles, site gate etc.
- Point out the front boundary setbacks and associated treatments, characteristic of established properties in the vicinity of the application site, give an accurate illustration of the true potential along the application site frontage.
- Point out the road geometry along the road passed the application site, is straight, with excellent visibility in each direction.

#### 6.1.4. Refusal Reason No.1

- Reference there are many houses within the Inner Protection Area of the Bog of the Ring Groundwater Protection Zones. Several of these houses have received planning permission in recent years.
- Note ‘Irish Water’ recommend refusal, because the site is within 300m radius of the source well.
- Applicant fully accepts this issue requires attention. Accordingly, applicant has altered the proposed ‘wastewater treatment system’, to now include –
  - a tertiary sand filter system, and

- to raise the base of the infiltration bed for 1.0m bgl to allow for further treatment through the unsaturated subsoil.
- Reference letter provided by the ‘Site Suitability Assessor’, confirming this alteration to the design of the proposed ‘wastewater treatment system’ will provide a level of protection well above the minimum required for an inner source protection zone.
- Taking this approach, the applicant can control the issue, and provide a suitable solution.
- This approach by the applicant “is more robust than arbitrarily excluding development based on a radius drawn on a map”.
- Note the following from investigations into the site :
  - the bedrock on site is ‘Dinane Upper Impure Limestone’
  - the Bog of the Ring Hydrogeological Assessment (October 2006) by TES Consulting Engineers notes :
    - groundwater vulnerability over the majority of lands within the Bog of the Ring are classified as low, due to the presence of a thick, low permeability subsoil
    - the aquifer recharged at higher rate than initially calculated
    - runoff from the hilly northern and southern sides of the Bog of the Ring, were likely to contribute to this due to the higher permeability of the subsoils there.
    - the recharge rate at the valley floor (ie. location of the application site) is slower, due to the low permeability subsoils.
    - the area is one of ‘an exceptionally complex hydrogeological regime’, and that the groundwater flow in the bedrock is through faults and fractures in the bedrock, with the main fracture alignment believed to be along a west-northwest to south-southeast zone.
- Having regard to the Consulting Engineers report, understand that the outlying areas of the Bog of the Ring are contributing to the ‘groundwater’ at a far higher rate than areas closer to the well. This suggests that any development should be reviewed on a case by case basis.
- Deduce possibility that some of the planning permissions granted recently –
  - were in the zones of higher permeability soils, and

- are potentially contributing to contamination of the groundwater.
- Having regard to the Consulting Engineers report, understand that proximity to the well is not an accurate method in determining the potential of contamination. Therefore, it is completely appropriate to review this refusal reason, and to look at the proposed method of treating the waste from the proposed development, to be located on the application site.

#### 6.1.5. Fingal Planners Report

Reference the following from the report –

- Development Plan Standards exceeded
- Open Space complies with Objective DMS87
- Design, Scale and Bulk considered acceptable
- ‘it is not considered that the proposed development would negatively impact on the visual or residential amenities of the area, issues of overbearing, overshadowing and overlooking will not arise’.

#### 6.1.6. **Conclusion**

- Express conviction that at least 3no. of the 4no. stated ‘refusal reasons’ have been “comfortably satisfied by the information attached” with the appeal submission, including the additional drawings and the “Appropriate Assessment”.
- Applicant would welcome any further Conditions deemed as necessary, in order to protect the interests of all parties.
- Acknowledge “ground water contamination” as a sticking point. However, consider it appropriate to look at each case, and make a decision based on the facts, rather than working “to arbitrary mapping models based on proximity”.
- “The latter does not create fair outcomes, or deliver appropriate Standards for the general public”.
- Highlight reference to the inclusion in the appeal submission documentation, of a letter from David Ryan ‘Site Suitability Assessor’, confirming changing the design of the system.

## 6.2. **Planning Authority Response** (28-08-2018)

### 6.2.1. 1<sup>st</sup> Refusal Reason

- With respect to the proposed 'waste water treatment system', note the applicant's revision to include a tertiary sand filter system.
- Notwithstanding this revision, the Planning Authority remains of the view that having regard to the location of the proposed development within the Inner Protection Area of the Bog of the Ring Groundwater Protection Zones, the proposed development –
  - would result in the contamination of the ground water,
  - would be prejudicial to public health, and
  - would materially contravene Objective RF67 of the County Development Plan 2017-2023, which is to implement the recommendations of the Ground Water Protection Scheme.

### 6.2.2. 2<sup>nd</sup> Refusal Reason

- Note applicants inclusion in the appeal submission documentation, of a letter from the Finglas Credit Union Ltd. confirming his address as Ring Commons, The Naul, Co. Dublin, since the year 2000.
- This was not submitted previously to the Planning Authority.

### 6.2.3. 3<sup>rd</sup> Refusal Reason

- Point out the applicant has not demonstrated on a site plan the full extent of works required to ensure adequate sightline provision.
- assert the likelihood that areas of the boundary hedgerow outside the applicants blue and red line boundary, would need to be trimmed back, to allow for the required visibility from the proposed access, particularly to the west.
- The applicant not demonstrated that 'suitable consent' has been obtained from the landowner, to carry out the necessary works.
- As proposed therefore, the proposed development would constitute a traffic hazard.

#### 6.2.4. 4<sup>th</sup> Refusal Reason

- Note applicant's submission of an Appropriate Assessment 'Screening Report', included with the appeal submission to the Board.
- This was not submitted to the Planning Authority.

6.2.5. Request the Board uphold the decision of the Planning Authority.

6.2.6. Should the Board be mindful to grant planning permission, request the Board attach a Condition requiring a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

#### 6.3. **Observations**

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
- Rural Landscapes and associated Visual Amenity Impact
- Residential Amenity Impact
- Road Access and Traffic Safety
- Wastewater Treatment
- Appropriate Assessment – Screening

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

- 7.2.1. The application site is located in an under-serviced rural area within Fingal County, that is designated as being under strong urban influence in the Sustainable Rural Housing Guidelines 2005 and the Fingal County Development Plan 2017-2023.
- 7.2.2. The application site is designated with the Zoning Objective “RU – Rural”, with the 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”. ‘Residential’ land use is permitted ‘in principle’, subject to compliance with the ‘Rural Settlement Strategy’
- 7.2.3. 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 2017-2023.
- 7.2.4. Section 5.2 ‘Fingal’s Rural Settlement Strategy – Rural Generated Housing Need, and Table RP02 – ‘Who is Eligible for Planning Permission ?’, of the County Development Plan 2017-2023 (copy attached), set out and define the Five (5No.) Categories of people qualifying to have a genuine rural-generated housing need. Having regard to all of the information available, the applicant has motivated that he qualifies under one of these five categories, namely, as a person with close family ties to the Fingal rural community as defined in Table RH03 paragraph (i).
- 7.2.5. In compliance with the eligibility criteria prescribed at Table RF03, and having 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 both the application for planning permission, and the 1<sup>st</sup> party appeal, I am satisfied that the applicant has demonstrated that –
- he is a member of a rural family,
  - he requires residency close to the family home, by reason of close family ties,
  - he has resided locally within the ‘family home’ at Ring Common, Naul, Co. Dublin, for 19 years. I note the supporting documentary evidence submitted

by the applicant, demonstrating continuous residency locally for at least 15 years, and

- on the information available, he has never received planning permission for a rural dwelling in the County, and that neither has any other family member. Clearly however, the applicants mother received planning permission under **F97A/0801**, dated 1998 for the family home itself, and in which the applicant effectively has lived his life to date. I note the planning history search completed by the Planning Authority for the application site, and the surrounding local area, in this regard.

7.2.6. I have regard to 'Ring Commons' as the qualifying rural family home address of the applicant, for the purposes of Objective RH61 of the County Development Plan 2017-2023. The applicant has illustrated the application site at 'Ring Common', Co. Dublin is located c.60m along the same frontage of the local rural road, from the family home at Darcystown (see location maps included with application documentation).

7.2.7. Having established close 'family' connection with the local rural area and eligibility for single rural housing development, Objective RH61 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 Ring Common, Co. Dublin is located c.60m east along the same frontage of the local rural road, from the family home at Ring Common, clearly well within the maximum of 2km prescribed under Objective RH61. The applicant therefore, in my view, satisfactorily complies with this aspect of the Fingal Rural Settlement Strategy.

7.2.8. Accordingly, I am satisfied the applicant meets the requirements of the Zoning Objective "RU - Rural", the Fingal Rural Settlement Strategy, and Objective RF39 and Table RF03 particularly. Subject to demonstrated compliance with the relevant provisions of Chapter 12 – "Development Management Standards" of the Fingal County Development Plan 2017-2023, I believe the principle of the proposed development is acceptable.



7.2.9. In my view therefore, having regard to the above, the Planning Authority's "Refusal Reason No.2" has been overcome.

### **7.3. Rural Landscapes and associated Visual Amenity Impact**

7.3.1. The suite of provisions set out in the Fingal County Development Plan 2017-2023 are such that any new development requiring a rural location should not seriously detract from the rural landscape character of the area, or intrude on the associated visual amenity, and should generally reflect the traditional aspects in design and treatment. In respect of the public realm, I am of the view that no unnecessary or serious disproportionate impact will result consequent of the development of the proposed single house, in the in situ 'Ring Commons' landscape

7.3.2. Having regard to the potential for negative visual amenity impact on the rural character of the RU Zone, I note that whilst encumbered with several 'designations' (ie. 'highly sensitive landscape', 'ecological buffer zone', "Bog of the Ring" proposed 'Natural Heritage Area', the 'Inner Protection Area' of the 'Bog of the Ring Ground Water Protection Zones' amongst others – see paragraph 4.1 above), no designated Scenic Views or Viewing Points exist either on, or in the vicinity of the application site at Ring Commons.

7.3.3. The application site itself is well screened from view from the local rural road network and associated public space, by mature, dense and full hedgerows and trees, together with single house development with associated property boundary demarcation and landscaping (see attached photographs taken at the time of physical inspection). This is particularly so along the westerly approach from the Naul.

7.3.4. Set back c.13m from the Naul local rural road frontage, and c.46.5m from the 'Dermotstown RC' local rural road respectively, I believe the proposed new dwellinghouse would be sufficiently and satisfactorily screened in the local 'Ring Commons' landscape, when viewed from the surrounding local rural road network

generally, and the westerly and northerly approaches from the 'Naul' and the 'M1' / 'Balbriggan' specifically.

- 7.3.5. 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 from that already proposed by the applicant, could be achieved by supplementary landscaping and planting around and within the application site.
- 7.3.6. Accordingly, I believe no disproportional negative visual impact will result locally, consequent of the proposed development. I share the view of the Planning Authority in this regard.
- 7.3.7. I have also had regard to the applicant's 'Visual Impact Assessment', included with the initial planning permission application documentation. I note this Assessment concludes the proposed development will have a largely neutral impact on then surrounding area, and that the overall design and character of the proposed single dwellinghouse is such that it integrates into the local landscape. Having regard to my own assessment set out above, I accept these conclusions as reasonable.

#### **7.4. Residential Amenity Impact**

- 7.4.1. Having regard to all of the information available, and prioritising the prevalence of surrounding agricultural fields, the absence of immediately adjacent residential development, and to the large separation distances locally, to existing single house residential development at 'Ring Commons', I am of the view that the proposed new detached dwellinghouse will have no serious, or disproportionate negative impact on prevailing residential amenity. In this regard, I have given consideration to potential threats to residential amenity consequent of : visual obtrusion, loss of natural light or overshadowing, overlooking or freedom from observation, noise, onsite private amenity / leisure space, in situ views and outlooks, on-site car parking, and access and traffic safety. Certainly, in this regard, I share the view expressed by the

Planning Authority that the proposed development is generously compliant with the 'Development Management Standards' set out at Ch.12 of the County Development Plan 2017-2023.

7.4.2. Further, I am satisfied that the proposed dwellinghouse would provide for an acceptable level of residential amenity for anticipated occupants, having regard to floor area, room sizes, orientation, daylight, sunlight, storage, private amenity space, on-site car parking and road access.

7.4.3. Albeit low levels and sparsely distributed existing residential development at 'Ring Commons', I do acknowledge the potential for negative impact of construction activity on contextual residential amenity, whilst site works and construction activity are on the go. However, I consider that these impacts are only temporary, are to facilitate the completion of the proposed development, and certainly cannot be regarded as unique to this modest development. Further, I consider that given these impacts are predictable and to be expected, they can be properly and appropriately minimised and mitigated by the attachment of appropriate conditions to a grant of permission, should the Board be mindful to grant permission, and deem such mitigation of negative impact necessary.

#### **7.5. Road Access and Traffic Safety**

7.5.1. In consideration of the physical accessibility of the application site, I acknowledge the capacity of the existing local rural road network. A notable mix of domestic non-agricultural related traffic loading and typical agricultural related traffic movements were apparent along the local county road passed the site at the time of physical inspection. In itself, I understand this mix of traffic type movement locally, reflects the areas evolving historical and contextual role from solely servicing rural livelihoods and associated agricultural land use activity, to serving as a link between the rural north County Dublin and the Greater Dublin Functional Region to the south.

7.5.2. I believe it relevant to point out that the application site is already served with direct access off the local rural road passed the site's southern boundary frontage. This

existing access enabled accessibility to the agricultural fields the application site, as a subdivision, formed a component of. At present, the existing access is boarded with wooden pallets. The current geometric, spatial and topographical context of the location of the proposed new domestic entrance junction is clearly shown in photographs attached, taken at the time of physical inspection.

- 7.5.3. Notable in my view is the favourable road geometry and alignment passed the application site frontage, being straight for several hundred metres, and a gentle decline from west to east. The road surface itself is in good condition, with excellent visibility in each direction.
- 7.5.4. Having thoroughly inspected this location, I believe that a sightline of 85m (to Planning Authority and County Transportation Planning Section Requirement) is achievable to each of the westerly and easterly approaches, without serious threat to the trees / hedgerow along the application site frontage, and without threat of compromise from adjacent 3<sup>rd</sup> party owned lands and associated road frontages to the west and east respectively.
- 7.5.5. In this regard, having inspected the site boundary frontage throughout its length, and with particular reference to the positioning of the ESB poles, the set back of the existing entrance onto the application site, the setback of the site gate and fencing along the adjacent 3<sup>rd</sup> party site to the west, and the set back and road front boundary treatment of domestic developed single properties further westward, starting with the applicant's 'family home', I am inclined to accept as reasonable the applicants argument made on 1<sup>st</sup> party appeal that the overgrowth presently characterising the application site frontage, gives a false visual impression of the true site boundary frontage set back.
- 7.5.6. I therefore accept the clarification argued by the applicant on appeal that the actual treeline / hedgerow along both the site frontages on either side of the proposed entrance, are behind the required 'set back' standard of 2.4m. Consequently therefore, if these hedgerows were trimmed back and to a height of 1.6m clear visibility up to the stated 85m requirement in either direction from a vehicle would be enabled.

- 7.5.7. Therefore rather than the comprehensive removal of lengths of road frontage 'hedgerows', the protection of which is an expressed 'rural objective' in the County Development Plan 2017-2023, the stated 85m sightline is achievable at present by way of trimming and cutback to the existing established and currently overgrown hedgerows.
- 7.5.8. In this way I believe that not only would the required 85m sightlines be achieved, with associated benefits to traffic safety, but the tidying up of the existing overgrown hedgerows would contribute to improvement to the visual rural landscape amenities in the locality associated with field boundary delineation in rural areas. In my view , seasonal maintenance of the site boundary frontage going forward, in the interests of traffic safety, would directly contribute to sustained improved conditions for traffic safety and the proper planning and sustainable development of the area.
- 7.5.9. Further, I am of the view that set back 2.4m at the proposed entrance onto the application site, achieving the 85m sightline requirement would be within the SW and SE corner pegs of the site, and therefore would not be dependent on the applicant obtaining the consent of the adjacent 3<sup>rd</sup> party landowners to the west and east.
- 7.5.10. Notable in this regard at the time of physical inspection was that the adjacent 3<sup>rd</sup> party boundary frontage to the west had been substantially cleared of hedgerow, with only clumps of small tree / hedgerow sporadically present along the frontage. This status in my view positively consolidates and enhances visibility westward from the proposed entrance onto the application site.
- 7.5.11. In my view therefore having regard to all of the above, the Planning Authority's stated 'Refusal Reason No.3' has been overcome.

## 7.6. **Wastewater Treatment**

- 7.6.1. The local 'Ring Commons' area is unserved in terms of public waste water treatment, thus necessitating the proposed use of an individual on-site effluent treatment system on the application site.

- 7.6.2. Having regard to the documentation attached on file, including the planning application documentation related to stated 'Refusal Reason No.1' under **F18A/0262**, to the technical opinions stated under **F18A/0262**, with weighted reference to the application site location within the 'Bog of the Ring', and to my own observations of the on-site ground and soil conditions made at the time of physical inspection, I am of the view that satisfactory onsite effluent treatment and disposal is a serious challenge facing the applicant. The significance of this challenge is emphasised when having regard to the emerging 'non-agricultural' single house development in the area, the site location proximate to the 'Bog of the Ring', Objective RF67 and other relevant provisions of the County Development Plan 2017-2023, and to the circular letter PSSP 1/10 issued by the DoEH&LG in relation to the implementation of the EPA Code of Practice on Wastewater Treatment and Disposal Systems serving single houses (dated 05<sup>th</sup> Jan. 2010).
- 7.6.3. I have given careful regard to the "Site Suitability Assessment and BRE Digest 365 Report" on file, conducted by 'Percolation Tests.ie' (dated 02/05/2018), I have further had regard to my own observations made at the time of site visit, and to the topographical, environmental and drainage characteristics of the site observed at that time, most notably the absence of any standing water collection (this after rains). Whilst no obvious ponding and standing water was evident, nor reeds and hydroponic type vegetation, surface soil conditions generally on site were firm under foot.
- 7.6.4. I take note of what I understand to be satisfactory at least Trial Hole (ie: no water and no bedrock – hole depth 2.10m), and 'T'- Value (ie: 38.06) and 'P' – Value (ie: 35.19) results. I note the comprehensive, clear and detailed 'Trial Hole' and 'Percolation Hole' photographs included with the report, and I have verified the shown classification of the site on the 'GSI Vulnerability Map' as Low (ie. locally important aquifer (Lm) – 'low vulnerability'). Further, the site has an 'R1' groundwater response, under the EPA Code of Practice 2009. I understand single house effluent treatment systems are acceptable in such areas, subject to normal good practice.

- 7.6.5. Having regard to the above, and on the information available, I deem the applicants' proposed "site improvement works" including 'Packaged Waste Water Treatment System (ie. 'Streamline BAF PE6 WWTS) and 'Sand Polishing Filter' (ie. 'A 90m<sup>2</sup> Pumped Pressurised Percolation Area'), all in accordance with EPA Code of Practice - 2009, as reasonable precautionary mitigation intervention towards adequate ground water protection, and of local wells. I accept as reasonable, the conviction expressed by the applicant in this regard.
- 7.6.6. 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 Suitability Assessment and BRE Digest 365 Report" on file, conducted by 'Percolation Tests.ie' (dated 02/05/2018), and including required certified compliance that the percolation area has been designed, laid out and constructed in accordance with the design proposed.
- 7.6.7. Accordingly, I conclude that on the information available, the proposed development would have no serious disproportionate threat to public and environmental health generally, and 'groundwater' quality in the local area specifically, and in this regard would be in accordance with the proper planning and sustainable development of the area.
- 7.6.8. However, notwithstanding what I understand to be satisfactory 'Site Suitability' test results for the application site, with associated suitable proposal for on-site 'Packaged Waste Water Treatment' and disposal to 'Sand Polishing Filter' and Ground Water, I note the conviction of each of the County Water Services Section and 'Irish Water' that planning permission be refused for the proposed development due to the application site location within the 'Inner Protection Area' of the Bog of the Ring Ground Water Protection Zones, dated March 2005, prepared by the Geological Survey of Ireland. The proposed development would therefore, result in the contamination of the 'Groundwater', with consequent prejudice to public health

and would therefore contravene Objective RF67 of the County Development Plan 2017-2023, which seeks to “implement the recommendations of the ‘Ground Water Protection Zone’”. This comprised stated ‘Refusal Reason No.1’, of the four (4no.) stated ‘Refusal Reasons’.

7.6.9. Having regard to the substance of ‘Refusal Reason No.1’, I have made considered reference to the following :

- Refusal Reason No.1 itself,
- Applicants 1<sup>st</sup> party appeal submission,
- The respective County Water Services Section and Irish Water reports,
- Fingal County Development Plan 2017-2023,
- The Environmental Protection Agency – Code of Practice : Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10),
- Bog of the Ring – Groundwater Source Protection Zones (March 2005), prepared by Natalya Hunter Williams and the Geological Survey of Ireland, in collaboration with Fingal County Council,
- Water Framework Directive, Groundwater Monitoring Programme, Site Information Bog of the Ring – PW3 (August 2011), prepared by the Environmental Protection Agency and the Eastern River Basin District,
- Fingal County Bog of the Ring, Final Hydrogeological Assessment Report (October 2006), prepared by ‘TES Consulting Engineers, and
- The Geological Survey of Ireland (GSI) website outline of ‘Programmes and Projects’ :
  - Groundwater
  - GSI Projects
  - Protecting Drinking Water
  - What is Drinking Water Protection ?
  - County Groundwater Protection Schemes
  - Groundwater Protection Scheme Maps
  - Groundwater Protection Scheme Reports
  - Source Protection Zone Reports
  - Groundwater Source Protection Terminology



7.6.10. The 'Bog of the Ring – Groundwater Source Protection Zones' was completed dated March 2005 (prepared by Natalya Hunter Williams and the Geological Survey of Ireland, in collaboration with Fingal County Council). At Section 8 – 'Delineation of Source Protection Areas' (pg35), the areas around the wells that are believed to contribute groundwater to the wells, and that therefore require protection, are delineated. Two 'source protection areas' are delineated :

- 'Inner Protection Area (SI)' – designed to give protection from microbial pollution, and
- 'Outer Protection Area (SO)' – encompassing the remainder of the 'Zone of Contribution' (ZOC) of the well.

The 'Inner Protection Area (SI)' is "the area defined by a 100-day time of travel (ToT) to the source" (pg 36). The 'Inner Protection Area (SI)' is delineated "to protect against the effects of potentially contaminating activities that may have an immediate influence on water quality at the source, in particular microbial contamination" (pg 36).

7.6.11. Figure 8 sets out the Zone of Contribution (ZOC) to the 'Bog of the Ring' wells, showing the Inner (SI) and Outer (SO) Protection Zones. Five (5no.) 'Production Wells' are also referenced, four (4no.) of which are 'Active' (ie. PW2 – PW5), and one (1no) is 'Inactive' (ie. PW1 located to the east of the M1). Well PW3 is located nearest to the application site at Ring Commons.

7.6.12. Section 9 – 'Vulnerability' explains how groundwater vulnerability is dictated by the nature and thickness of the material overlying the uppermost groundwater 'target'. Consequently, vulnerability relates to the thickness of the unsaturated zone in the sand / gravel aquifer, and the permeability and thickness of the subsoil in areas where the sand / gravel aquifer is absent.

7.6.13. For the purposes of 'vulnerability mapping', the source of the groundwater is the bedrock. However, depth to bedrock can vary over short distances. Therefore, vulnerability mapping as provided for the 'Ring of the Bog' will not be able to anticipate all the natural variation that occurs in the area. Emphasis is stated that the mapping "is intended as a guide to land use planning ..., and is not a substitute

for individual site investigation for specific developments”. Further emphasis is made that classifications may change as a result of investigations such as trial hole assessments for onsite domestic wastewater treatment systems. The report further sets out that the potential for discrepancies between large scale vulnerability mapping and site-specific data has been anticipated and addressed in the development of groundwater protection responses (ie. site suitability guidelines) for specific hazards. In this regard, and referencing ‘Refusal Reason No.1’, I believe that the ‘Site Suitability Test’ and associated documentation becomes an important, relevant consideration as to the sustainability of the proposed development.

7.6.14. ‘Groundwater Protection Zones’ are then obtained by integrating the 2no. elements of land surface zoning (ie. source protection areas and vulnerability categories), resulting in 8no. possible source protection zones. 8no. groundwater protection zones are present around the five (5no.) ‘Bog of the Ring’ public supply wells, as shown in Table 10 – ‘Matrix of Source Protection Zones for the Bog of the Ring public supply (pg 38). (Note: one (1no.) well located to the east of the M1 with consequent reduced relevancy). The application site, with a ‘Low’ Vulnerability Rating (ie. ‘L’) and located within the Inner Source Protection Zone (ie. ‘SI’), has a code of ‘SI/L’. Therefore, I understand that the application site is located within the ‘Inner Protection Area’, where the groundwater has a ‘Low’ Vulnerability to contamination. In my understanding this would appear to indicate a lesser threat, than that argued by the Co. Water Services Section and ‘Irish Water’, which substantively informed ‘Refusal Reason No.1’

7.6.15. With respect to the identification of ‘potential pollution sources’ (9.2, pg 38), agricultural activities and single house development, such as that proposed by the applicant at ‘Ring Commons’, are recognised as the principal hazards to the supply wells. Having regard to the locational spread of the five (5no.) abstraction wells, abstraction well – ‘PW3’ is located closest and to the southeast of the application site, and requires reference as to the suitability and adequacy of proposed wastewater treatment and disposal arrangements for the proposed domestic single house development. Overall, the main potential sources of pollution includes amongst others, septic tank systems, with among the main potential pollutants, faecal bacteria.

- 7.6.16. Having regard to all of the above, I note that no concluding statement or recommendation is made, such that single house development located within the 'Inner Protection Area', be prohibited. Rather, what I understand as enabling recommendations are stated that particular care be taken when assessing the location of developments such as single houses, within the Inner Protection Area (SI), that might cause contamination at the boreholes (ie. such as at Abstraction Well 'PW3' within the 'Bog of the Ring'), and that the potential hazards be identified, and a risk assessment of each hazard completed.
- 7.6.17. I understand that the above recommendations, and in the context of the proposed single house development at 'Ring Commons', located within the 'Inner Protection Area (SI) of the 'Bog of the Ring' Groundwater Protection Zone, are enabled directly with reference to Annex B to the EPA 'Code of Practice : Wastewater Treatment and Disposal Systems Serving Single Houses (p.e.≤10)', and the scope of which sets out the "Groundwater Response Matrix for One-off Housing Wastewater".
- 7.6.18. The EPA clarify that the focus of the Annex B document is to logically establish groundwater protection responses for the siting of onsite wastewater treatment systems for a single dwellinghouse of up to 10no. people, with normal domestic amenities (eg. toilet usage). The 'groundwater protection responses' outline acceptable onsite wastewater treatment systems within each groundwater protection zone, and recommend conditions and / or investigations depending on the groundwater vulnerability, the value of the groundwater resource, and the contaminant loading. Emphasis is made that these 'groundwater protection responses' relate to discharge to groundwater, thereby enabling a reference for consideration of the applicant's proposals for wastewater treatment and disposal on the application site at 'Ring Commons'.
- 7.6.19. Consequent of a risk assessment approach, a 'Groundwater Protection response Matrix' is developed, assisting both landowners / applicants and the respective responsible public authorities, as to the appropriate location and sustained viability of 'single house wastewater treatment systems'.

Table 2 in Annex B to the EPA 'Code of Practice' (2009), sets out the groundwater response matrix for on-site wastewater treatment systems to serve a single house development. The appropriate response to the risk of groundwater contamination from an on-site wastewater treatment system is given by the assigned response category (R) appropriate to each protection zone.

7.6.20. Having regard to Table 2 therefore, the application site with a 'Low' Vulnerability rating, and located within the delineated 'Inner Protection Area' (S.I.), has a rating of 'R2

<sup>4</sup> means – supplementary

*"Acceptable subject to normal Good Practice, Conditions 1 and 2 above and the following additional Condition –*

*3. No on-site treatment system should be located within 60m of the public, group scheme ... water supply source".*

Table 2 matrix provides further that the 'Locally Important' (Lm) aquifer, and 'Low' (L) 'Vulnerability rating', gives a groundwater protection response of 'R', which Table 2 qualifies is – "Acceptable subject to normal good practice" (ie. system selection, construction, operation and maintenance in accordance with EPA (2000)).

7.6.21. With the relevant response rating determined for the application site (ie. 'R2<sup>4</sup>'), Annex B provides further for management of the risk posed to features identified during the applicants "Site Suitability Assessment and BRE Digest 365 Report". These features include water supply wells such as 'PW3', located to the southeast of the application site. Having careful reference to the applicant's "Site Suitability Assessment and BRE Digest 365 Report" (c/o 'Percolation Tests.ie'), no reference is apparent to the application sites proximity, and the location of the proposed 'on-site wastewater treatment system' specifically, to water supply well – 'PW3'.

7.6.22. Of further noteworthiness in my view, is that on the information available it would appear that the applicant's 'desk top study' component of the "Site Suitability Assessment" report (c/o 'Percolation tests.ie') did not have regard to the report "Bog of the Ring – Groundwater Source Protection Zones (March 2005), prepared by Natalya Hunter Williams and the Geological Survey of Ireland, in collaboration with Fingal County Council. Consequently at Section 2.0 'General Details' of Appendix B

'Site Characterisation Form', the applicant was not able to reference the application site location within the 'Inner Protection Area' (S.I.) of the Bog of the Ring 'Zone of Contribution' (ZoC).

7.6.23. Having determined the response rating of 'R2', with the application recommendation of acceptability subject to normal good practice, and 3no. Conditions, Table 3 to Annex B sets out the recommended distances between receptors such as production well 'PW3' in this case, and the on-site location of the proposed 'percolation area / polishing filter', in order to protect groundwater.

Both Table 2, at Condition (3) for a rating of 'R2' and Table 3 recommend that the minimum separation distance between the 'public water supply' production well 'PW3' and the on-site location of the proposed 'polishing filter' is 60m. Having regard to the site layout plans and other mapping included with both the original planning application and the 1<sup>st</sup> party appeal, I understand the relevant separation distance to be c.75m, which exceeds the recommended Standard of 60m.

7.6.24. In the applicants 1<sup>st</sup> party appeal submission, I note the statement that 'Irish Water' recommended refusal, because the application site is within 300m radius of the source well, which I understand as production well 'PW3'. Having regard to each of the 'Irish Water' and Co. Water Services Section reports, I am not certain that their respective comments are correctly referenced by the applicant. Rather I understand their respective, similar reports briefly outline the methodology for delineation of the 'Inner Protection Area' boundary for the 'Bog of the Ring' (ie. is based on the 100 day time of travel from the source to the receptor), which extends more than 300m from the source well, in the direction of the application site. Therefore the reports reference in my understanding, that the furthest point of the 'Inner Protection Area' (S.I.) boundary from well 'PW3' is 300m, and that the proposed development is less than 90m from 'PW3'. I calculate the separation distance of the location of the proposed 'polishing filter' to supply well 'PW3' as c.75m. As stated earlier in this discussion, the 'Inner Protection Area' (S.I.) is delineated in order to give protection to ground water supply from microbial pollution. However, I do not share the conviction apparent in the deduction and substantiation of 'Refusal Reason No.1' for the applicants proposed development, that location of proposed development within

'Inner Protection Area' (S.I.) determines the decision for 'Refusal'. If the application site, located within the 'Bog of the Ring – Inner protection Area' had a 'Vulnerability rating' of 'High' or 'Extreme', I would, having regard to 'Table 2 – Response Matrix for On-Site Treatment', be inclined to regard the proposed wastewater treatment system as "Not generally acceptable". However, even under those circumstances I understand Table 2 as being more enabling of appropriate development, than not.

7.6.25. Therefore, contrary to the opinions of the Planning Authority, the Co. Water Services Section and 'Irish Water', that the proposed development be refused as per 'Refusal Reason No.1', having regard to all of the above, including the applicants stated commitment as part of the 1<sup>st</sup> party appeal submission to further supplement the proposed on-site wastewater treatment system (ie. a tertiary sand filter system and supplementation to the infiltration bed), I am rather inclined to conclude in favour of the applicants proposed "site improvement works" including 'Packaged Wastewater Treatment System' (ie. 'Streamline BAF PE6 WWTS) and 'Sand Polishing Filter' (ie. 'a 90m<sup>2</sup> Pumped Pressurised Percolation Area') as initially proposed, and now revised and supplemented with a tertiary sand filter system, and to raise the base of the infiltration bed for 1.0m bgl to allow for further treatment through the unsaturated subsoil, all in accordance with the EPA Code of Practice 2009, as reasonable precautionary mitigation intervention towards adequate ground water protection, and of the local supply wells. This to include required certified compliance that the percolation area / polishing filter has been designed, laid out and constructed in accordance with the design proposed, and inclusive of demonstrated commitment to sustained operation and maintenance of the on-site system.

7.6.26. Further, having demonstrated reasonable compliance with each of the key contextual references, namely -

- Bog of the Ring – Groundwater Source Protection Zones (March 2005), prepared by Natalya Hunter Williams and the Geological Survey of Ireland, in collaboration with Fingal County Council,
- Water Framework Directive, Groundwater Monitoring Programme, Site Information Bog of the Ring – PW3 (August 2011), prepared by the Environmental Protection Agency and the Eastern River Basin District,

- The Environmental Protection Agency – Code of Practice : Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10), and including Annex B thereto – “Groundwater Response Matrix for One-Off Housing Wastewater”,

I believe that consequent satisfactory compliance has been demonstrated with all of the County Development Plan 2017-2023 Objectives RF66, RF67, DW03, WT06, DMS53 and DMS54.

7.6.27. Accordingly, I conclude that on the information available, and subject to appropriate relevant Conditions, the proposed development would have no serious disproportionate threat to public and environmental health generally, and ‘groundwater’ quality in the local area specifically, and in this regard would be in accordance with the proper planning and sustainable development of the area.

7.6.28. In my view therefore, having regard to the above, the Planning Authority’s “Refusal Reason No.1” has been overcome.

## 7.7. **Appropriate Assessment - Screening**

7.7.1. ‘Refusal Reason No.4’ of the Planning Authority’s decision to ‘refuse’ planning permission to the applicant under **F18A/0262**, substantiates that the applicant’s failure to provide an ‘Appropriate Assessment Screening Report’, included as part of the application documentation, prevented the Planning Authority’s ability to undertake an ‘Appropriate Assessment’ of the proposed development. In the absence of such details therefore, the Planning Authority considered the proposed development would be contrary to the proper planning and sustainable development of the area.

7.7.2. Consequently, as part of the applicant’s 1<sup>st</sup> Party Appeal submission the report – “Appropriate Assessment Screening Statement in line with the requirements of Article 6(3) of the EU habitats Directive”, dated 31 July 2018, prepared by Rowan Engineering Consultants Ltd (c/o Noreen McLoughlin, BSc MSc MCIEEM – Consultant Ecologist and Ciaran Farrell, BSc, MSc), was included

7.7.3. In accordance with requirements, the report identifies that the location of the proposed development at 'Ring Commons' is within 10km of sites designated under European Law.

7.7.4. In accordance the requirements of Article 6(3) of the EU habitats Directive (Council Directive 92/43/EEC) regarding Appropriate Assessment, the applicant's screening exercise for Appropriate Assessment was undertaken in order to identify whether any significant impacts on the identified designated sites, are likely, both individually and in combination. Further, the appropriateness of the proposed development at 'Ring Commons' was determined, in the context of the conservation status and Objectives of the identified designated EU sites.

7.7.5. The report identified five (5no.) Natura 2000 designated sites within 10km of the application site, together with the respective relevant 'Qualifying Interests' (see 3.3 – Natura 2000 Sites Identified, page 12). These sites were –

- River Nanny Estuary and Shore (Code – SPA 004158), c.7.7km north
- Skerries Islands (Code – SPA 004122), c.8.7km east
- Rockabill to Dalkey Island (Code – SAC 0030000), c.10.6km east
- Rogerstown Estuary (Code – SAC 000208), c.8.9km south
- Rogerstown Estuary (Code – SPA 004015), c.9.1km south

The spatial and geographic contextualisation of these Natura 2000 designated sites, to the application site at 'Ring Commons' is clearly represented at Figure 5 – 'The Application Site in relation to the Natura 2000 Sites (SACs – Red Hatching; SPAs – Pink Hatching)' (page 14).

7.7.6. At 3.4 'Assessment Criteria' (page 16), the impacts, if any, of the proposed development on the identified designated Natura 2000 sites, were considered. In addition, potential impacts by the proposed single house development on the 'Bog of the Ring' pNHA were also considered as part of the assessment.

7.7.7. Having regard to the location, nature and scale of the proposed development, the report considered that there is no potential for significant effects either from the proposed development on its own, or in combination with other plans and projects. Nor would any designated species or habitats be impacted.



- 7.7.8. The report concluded as follows – “It can be concluded objectively that should this development be granted planning permission, there will be no impacts upon the integrity or the conservation objectives of any SAC, pNHA or SPA. The habitats and species associated with this site will not be adversely affected. This proposed development does not need to proceed to Stage 2 of the ‘Appropriate Assessment’ process”. I share this conclusion.
- 7.7.9. In their response submission to the 1<sup>st</sup> party appeal, the Planning Authority note the applicant’s submission of an Appropriate Assessment ‘Screening Report’, included with the appeal submission to the Board. They affirm such report was not submitted to the Planning Authority.
- 7.7.10. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on the European Sites No. SPA 004158, SPA 004122, SPA 004015, SAC 0030000 and SAC 000208, or any other European site, in view of the sites Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## **8.0 Recommendation**

- 8.1. I recommend that planning permission should be Granted for the ‘Reasons and Considerations’ set out below.

## **9.0 Reasons and Considerations**

Having regard to the provisions of the Fingal County Development Plan 2017-2023 and of the pattern of development in the vicinity, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be

prejudicial to public health or to traffic safety and would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application and by the further plans and particulars received by An Bord Pleanála on the 3<sup>rd</sup> day of August, 2018, except as may otherwise be required in order to comply with the following Conditions. Where such Conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars..

**Reason :** In the interest of clarity.

2. (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the Planning Authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
- (b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the Planning Authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.
- (c) This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

**Reason :** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this

rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction waste.

**Reason :** In the interests of public safety and residential amenity.

4. All waste generated during construction, including surplus excavation material to be taken off-site, shall be only received or disposed of at an authorised site which has a current Waste Licence or Waste Permit in accordance with the Waste Management Acts, 1996 to 2008. This shall not apply to the reuse of excavated material within the applicant's site boundary.

**Reason:** In the interest of public health and to provide for the protection of the environment.

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason :** In the interest of public health.

6. Physical infrastructure and servicing arrangements to enable the proposed development, shall comply with the requirements of the Planning Authority for such works and services.

**Reason :** In the interest of public health, traffic safety and orderly development.

7. Details of the materials, colours and textures of all the external finishes to the proposed dwelling shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development.

**Reason :** In the interest of visual amenity.

8. The site shall be landscaped, using only indigenous deciduous trees and hedging species, in accordance with details which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of development. This scheme shall include the following:

(a) the establishment of a hedgerow along all side and rear boundaries of the site, and

(b) planting of trees at intervals along the boundaries of the site.

Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

**Reason :** In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

9. During the course of construction work the developer shall provide on-site, a covered skip or other suitable receptacle for the deposit therein of all rubbish, litter, paper, packaging, rubble and other such materials arising from the works, and shall ensure that the site and its environs are maintained at all times in a clean and tidy condition.

**Reason :** In the interest of sustainable waste management and the visual amenity of the area.

10. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the Planning Authority on the 18<sup>th</sup> day of May, 2018, and by the further details received by An Bord Pleanála on the 3<sup>rd</sup> day of August, 2018, and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single

Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the Planning Authority.

- (b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.
- (c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and agreed in writing with, the planning authority within four weeks of the installation.
- (d) Surface water soakaways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.
- (e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the EPA document.

**Reason:** In the interest of public health.

12. All public service lines and cables servicing the proposed development, including electrical and telecommunications cables, shall be located underground except where otherwise agreed with the Planning Authority. Ducting shall be provided by the developer to facilitate the provision of broadband infrastructure within the proposed development

**Reason:** In the interest of orderly development and visual amenity.

13. The developer shall pay to the Planning Authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the Planning Authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development

Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the Planning Authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the Planning Authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason :** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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**L.W. Howard**  
**Planning Inspector**

**22<sup>nd</sup> November 2018**