



An
Bord
Pleanála

Inspector's Report ABP-302719-18

Development	The construction of a 4 no. bedroom detached dwelling and all associated site works.
Location	The Burrow Road, The Burrow, Portrane, Co. Dublin.
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F18A/0418
Applicant(s)	Kieran Buckley
Type of Application	Permission
Planning Authority Decision	To Refuse Permission
Type of Appeal	First Party v. Decision
Appellant(s)	Kieran Buckley
Observer(s)	No observers
Date of Site Inspection	08.12.2018
Inspector	Erika Casey

1.0 Site Location and Description

1.1. The subject site is located on the eastern side of Burrow Road in Portrane. To the west of the site, are a pair of semi-detached cottages. There are further detached dwellings located to the north and north east of the site. The property to the north is identified as the existing family home. The site is greenfield and the southern and western boundaries are bound by hedging. The general character of the area is rural with a number of single storey and dormer dwellings located along the Burrow Road.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a 4 bedroom detached dwelling with a gross floor area of 223 sq. metres on a site of 0.135 ha. The development also provides for connection to the mains foul drainage network and associated pumping station. Vehicular access is via a shared driveway onto the Burrow Road. The dwelling has a maximum height of 5.67 metres. The principle materials are render finish with a slate roof.
- 2.2. Existing hedging will be retained along the southern and western boundaries. A 1.2m high post and rail fence is proposed for the eastern and northern boundaries. 2 off street car parking spaces are proposed.

3.0 Planning Authority Decision

3.1. Decision

To Refuse Permission for 1 no. reason:

“The subject site is within the ‘RU’ zoning objective under the Fingal Development Plan 2017-2023, the objective of which is 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 proposed development fails to comply with the criteria for eligible applicants from the rural community for planning

permission for new housing as set out in Table RF03 given that a dwelling for a family member has already been permitted close to the family home. The proposed development is therefore contrary to Objective RF39 of the Fingal Development Plan 2017-2023.”

3.2. Planning Authority Reports

3.2.1. Planning Report (10.09.2018)

- Having regard to the documents submitted by the applicant, it is considered on balance, that the residency requirement in a rural area as set out in Table RF03 of the Co. Plan has been met.
- In relation to the requirement that no new rural dwelling has not already been granted planning permission to a family member by reason of close family ties, it is noted that the applicant’s brother was granted permission for a dwelling under Reg. Ref. F056A/1688 and F04A/1056.
- Overall the design, scale and bulk of the proposed development are 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 impacts, overshadowing and overlooking will not arise.

3.2.2. Other Technical Reports

Water Services Department: No objection subject to conditions.

Transportation Planning Section (14.09.2018): No objection. Note that the sightlines onto the public road from the existing entrance are acceptable. The new access gate off the shared driveway is shown set back 4.5m from the edge of the existing access road which provides for sufficient inter visibility.

Biodiversity Officer: No report on file but planner’s report notes that there was no objection to the proposal.

3.3. Prescribed Bodies

- No reports received.

3.4. **Third Party Observations**

- No observations.

4.0 **Planning History**

4.1 There is no planning history on the subject site. There have been a number of previous applications on adjoining sites.

Planning Authority Reference F11A/0174 (north)

4.2 Permission refused in June 2011 for a detached dwelling. Reasons for refusal related to public health and failure to comply with rural housing policy.

Planning Authority Reference F09A/0163/ Appeal Reference PL06F.233911 (north)

4.3 Permission refused by the Board in January 2010 for a dwelling. The reason for refusal stated:

“The proposed development is located within an area zoned with the objective “HA” which seeks “to protect and improve high amenity areas” and a designated “sensitive landscape” in the Fingal Development Plan 2005-2011. It is the policy of the planning authority as set out in the development plan to limit the provision of new dwellings in these areas to members of farming families where an agricultural need can be demonstrated. On the basis of the submissions made in connection with the planning application and the appeal, it is considered that the applicant does not come within the scope of the criteria set out for a house at this location. The proposed development would, therefore, contravene materially a zoning objective for the area and be contrary to the proper planning and sustainable development of the area.”

Planning Authority Reference F05A/1688 (east)

4.4 Permission granted in November 2005 for amendments to previously approved development to include revised house type.

Planning Authority Reference F04A/1056 (east)

4.5 Permission granted in September 2004 for 4 bedroom, two storey detached dormer dwelling with shared entrance from Burrow Road. Applicant: Mr. B. Buckley.

5.0 Policy Context

5.1. Development Plan

5.1.1 The operative Development Plan is the Fingal County Development Plan 2017-2023. The site is zoned 'RU' with the 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."*

5.1.2 The vision for this zoning is to:

"Protect and promote the value of the rural area of the County. The rural value is based on:

- *Agricultural and rural economic resources.*
- *Visual remoteness from significant and distinctive urban influences.*
- *A high level of natural features.*

Agricultural and rural related resources will be employed for the benefit of the local and wider population. Building upon the rural value will require a balanced approach involving the protection and promotion of rural biodiversity, promotion of the integrity of the landscape and enhancement of the built and cultural heritage."

5.1.3 The site and adjoining lands are subject to **Local Objective 28** which states:

"Provide a maximum of 7.4 units per hectare, with a minimum site size area of 1,350 sq. metres and a maximum roof height of 6.15 metres over the prevailing established ground level. All new houses to connect to mains drainage with no provision for onsite treatment systems."

5.1.4 The site is also located in an area designated as a highly sensitive landscape. The lands immediately adjacent the site area zoned High Amenity.

5.1.5 The rural area of Fingal is identified as an area under 'Strong Urban Influence' and residential development is subject to compliance with the rural settlement strategy set out in the plan.

Objective RF26 states:

“Ensure the vitality and regeneration of rural communities by facilitating those with a genuine rural generated housing need to live within their rural community.”

5.1.6 **Objective RF33** requires that any rural house will be subject to an occupancy requirement for 7 years.

5.1.7 **Table RF03** sets out the criteria for eligible applicants from the rural community for planning permission for new rural housing and notes:

“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 the 19th of 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 or 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.”

5.1.8 **Objective RF39** states:

“Permit new rural dwellings in areas which have zoning objectives ‘RU’ or ‘GB’ on suitable sites where the applicant meets the criteria set out in Table RF03.”

5.1.9 **Objectives RF57, 58, 59, 61, 62 and 63** relate to design, siting and access requirements for rural dwellings.

5.1.10 There are a number of objectives of relevance in the plan including **Objective SS18, Objective PORTRANE 5, Objective RF27. Section 12.6** of the Plan sets out design criteria for housing in the countryside.

5.2 Sustainable Rural Housing Development Guidelines

5.2.1 The guidelines require a distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which ‘Rural

Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

5.3 National Planning Framework – Project Ireland 2040, DoHP&LG 2018

5.3.1 National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e. the commuter catchment of cities and large towns and centres of employment. This will also be subject to siting and design considerations.

5.4 Natural Heritage Designations

5.4.1 The closest European sites to the site are the Rogerstown Estuary SAC (Site Code 000208) and the Rogerstown Estuary SPA (Site Code 004015) which are located c. 200 metres from the proposed development.

6.0 The Appeal

6.1. Grounds of Appeal

- Note that the subject site is subject to Objective 28 of the County Development Plan. State that the applicant complies with the requirements set out in Table RF03 of the Fingal County Development Plan.
- States that the siting and orientation of the dwelling, with respect to the existing family home and the residential dwellings to the immediate west, allows for a coherent clustering of development on the subject lands. Consider the dwelling complies with the design specifications of Objective 28 and the principles of the Design Guidelines for Rural Dwellings set out in the plan.
- Refers to the Planner's Report and that the Planning Authority were satisfied the applicant complied with the residency requirements for rural areas. The development was also considered compliant regarding the relevant qualitative and quantitative standards set out in the plan, and that the design was appropriate.
- The area to which Map Based Local Objective No. 28 relates is demarcated on the land use zoning objective map. Both a density objective and a map based

local objective can be identified on sheet 7. The Fingal Development Plan does not contain written confirmation as to whether applicants do in fact have to comply with the rural settlement strategy for this area also. It is thus considered that this matter remains subject to interpretation. At pre planning stage, this was the direction given by Fingal Co. Co.

- Notes that the Planning Authority Planner's Report identifies the existing family home outside the blue line boundary to the north east of the proposed development. This is in fact the former family home and has not been in the ownership of the applicant's parents for c. 12 years. This dwelling was sold in 2006. The applicant's parents and immediate family moved into the dwelling adjacent to the proposed development. A revised site layout plan indicating the existing family home is in fact located to the north east is submitted with the appeal documentation.
- Note that condition 4 of Reg. Ref. F04A/1056 relating to the dwelling to the immediate east of the site (the family home) imposed an occupancy condition for a period of 5 years. It is considered under these circumstances that the subject development permitted under Reg. Ref. F04A/1056 represents a reinstatement of the homestead on the family lands which in turn would allow the applicant to apply for permission by reason of close family ties in accordance with Table RF03.
- State that documentary evidence is submitted demonstrating that the applicant has a long standing, existing and immediate connection with the local area. Considers development complies with National Policy Objective 19.
- States that consideration should be given to the housing crisis when considering the application. Refers to the South Shore area of Rush which it is considered bears a strong similarity to the Burrow and objective RF43.

6.2. Planning Authority Response

- It remains the opinion of the Planning Authority that the Map Based Local Objective no. 28 relates to the larger land area within the Burrow of which the site forms part of and which is zoned 'RU' Rural. The Rural Settlement Strategy as set out in the Fingal Development Plan 2017-2023 applies to those

'RU' lands. The appellant's submission provides no new information to warrant a reversal of this reason for refusal.

- Pre-planning advice is without prejudice. The development is a material breach of the Rural Housing Policy provisions of the Fingal Development Plan 2017-2023. Request that the decision of the Planning Authority is upheld by the Board.

6.3. **Observations**

- No observations.

7.0 **Assessment**

7.1. **Introduction**

7.1.1 The proposed development comprises a detached dwelling located on a site on the Burrow Road, Portrane. The design, scale and siting of the dwelling are generally considered appropriate and I am satisfied that the development would have no material adverse impacts on the visual amenities of the area or on the residential amenities of adjacent properties. The proposed access to the dwelling is via a shared driveway serving an existing dwelling located to the north east. The access onto the Burrow Road is established and no objections have been raised by the Transportation Department of the Council regarding the proposed intensification of use. The access meets the required sightline standards.

7.1.2 The main issues in this appeal, therefore, are those raised in the grounds of appeal and it is considered that no other substantive issues arise. Appropriate Assessment and EIA Screening also needs to be addressed. The issues can be dealt with under the following headings:

- Compliance with Rural Housing Policy.
- Appropriate Assessment.
- EIA Screening.

7.2 Compliance with Rural Housing Policy

7.2.1 The operative Development Plan for the area is the Fingal County Development Plan 2017-2023 which sets out zoning objectives and specific local objectives relevant to the site. Sheet 7 of the zoning maps clearly indicates that the site is subject to both the provisions of zoning objective 'RU' and also specific local objective no. 28. It is stated by the applicant that it is only the latter objective no. 28 that is relevant to the subject site and that the Development Plan is not prescriptive that the applicants must comply with the 'RU' objectives.

7.2.2 In my view there is no ambiguity that both the zoning and local objective requirements are applicable to the site. As can be seen from the zoning map, the subject site is clearly coloured blue – the colour that delineates the 'RU' zoning objective. The local objective, in my opinion, sets out broader requirements regarding overall site density, minimum site areas, height restrictions and drainage requirements. The imposition of such a local objective setting specific design requirements does not supplant or negate the requirement for an applicant to comply with the policies relating to the 'RU' zone, including the rural housing policy set out in the plan. This opinion is endorsed by the Planning Authority who also confirm that both the zoning and local objective requirements are applicable. In this context, Objective RF39 of the plan is relevant and states:

“Permit new rural dwellings in areas which have zoning objectives 'RU' or 'GB' on suitable sites where the applicant meets the criteria set out in Table RF03.”

7.2.3 Table RF03 sets out the specific criteria for eligible applicants from the rural community for planning permission for new rural housing and notes:

“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 the 19th of 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 or 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.”

- 7.2.4 In support of their application for eligibility under these criteria, the applicant has submitted a birth cert confirming his parents address as The Burrow Road, Portrane and letters from a primary school in Donabate and secondary school in Malahide confirming that the applicant attended school there and that his address at that time was the Burrow Road. It is detailed that having regard to the foregoing, that the applicant has demonstrated that he has lived in the family home for at least fifteen years. Letters from a football club and GAA club in Donabate have also been submitted confirming the applicant's membership.
- 7.2.5 From the documentary evidence submitted, the applicant appears to meet the general requirement of living in the family home identified in the application for at least fifteen years. However, when considering the applicants eligibility for a rural dwelling, regard must be had to wider national policy including the Sustainable Rural Housing Development Guidelines and the National Planning Framework. The subject site is located in an area under 'Strong Urban Pressure' due to its proximity to Dublin. The guidance notes that in such areas, the applicant should demonstrate a functional economic or social need to reside in the rural area which would typically include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.
- 7.2.6 Other than a desire to live in proximity to the family home, the applicant in my opinion, has no demonstrable social or economic need to live in this rural area. From the documentary evidence on file, he has not lived in the area since he finished secondary school in in 2004. The letters from sports clubs are both based in the urban settlement of Donabate, and whilst they may indicate an association with the wider geographical area, they do not in my view, substantiate any claim that the applicant is an intrinsic part of the local community or necessitate the applicant to reside in the rural area. The applicant has provided no evidence that he works in the rural area and, therefore, has no economic necessity to reside there. In this context, I consider that the development would be contrary to both key national policy documents.
- 7.2.7 The second key requirement of the rural housing policy set out in Table RF03 is that there should have been no rural dwelling already granted planning permission to a family member by reason of close family ties since the 19th of October 1999. In this regard, it is noted that planning permission has already been granted to the

applicant's brother under Planning Authority Reference F04A/1056 and F05A/1688. This dwelling is constructed and is located to the immediate north east of the site.

7.2.8 It is set out in the appeal, that the family home as identified on the site layout plan submitted with the application to the north east of the site has in fact been sold. A revised site layout plan is submitted with the application indicating that the family home is to the north east of the site and that the applicant parents now reside there. A letter from the applicant's father is submitted confirming this. It is stated in the appeal that under these circumstances that the subject development permitted under Reg. Ref. F04A/1056 represents a reinstatement of the homestead on the family lands which in turn would allow the applicant to apply for permission by reason of close family ties in accordance with Table RF03.

7.2.9 I note no legal documentation has been submitted to provide evidence of the sale of the subject property, nor is any explanation provided as to why the applicant's family home was erroneously indicated as being the dwelling to north of the site, as opposed to the north east. Notwithstanding this however, the fact that the main family home was subsequently sold after permission was obtained for the applicant's brother's dwelling to the north east is in my view irrelevant. The fact remains that the applicant's family have already been consented a dwelling on the landholding by reason of close family ties. Any subsequent sale of the family home does not, in my opinion, negate the need for the applicant to comply with the provisions set out in the current Development Plan under Table RF03.

7.2.10 The applicant makes reference to Objective RF43 in the current Development Plan. This objective is applicable only to the South Shore area of Rush. It does not pertain to the subject lands and in this regard, is irrelevant to the subject proposal.

7.2.11 In conclusion, contrary to the applicants assertion, I do not consider any exceptional circumstances are applicable to the subject site. I am satisfied that both local objective 28 and zoning objective 'RU' are applicable to the subject site. The applicant in my view has not demonstrated compliance with the policy requirements for a rural dwelling set out in Table RF03 as the applicant's parents have already benefited from planning permission for a family member by reason of close family ties. Furthermore, having regard to the policy guidance set out in the NPF and the Sustainable Rural Housing Development Guidelines, the applicant does not have a

demonstrable social or economic need to reside in a rural area. The development is thus considered contrary to the proper planning and sustainable development of the area.

7.3 **Appropriate Assessment**

7.3.1 A stage 1 screening report has been submitted with the application. The report notes that the closest European sites to the site are the Rogerstown Estuary SAC (Site Code 000208) and the Rogerstown Estuary SPA (Site Code 004015) which are located c. 200 metres from the proposed development. It is considered that there would be no direct impacts on either European site and no loss of habitat or fragmentation arising as a result of the development.

7.3.2 In terms of indirect effects the source pathway receptor model must be considered. It is considered that such indirect effects are unlikely due to the scale of the development and that fact that it will be connected to the existing municipal network and includes measures to address the treatment of surface water. The report concludes:

“The project is not directly connected with, or necessary to the conservation management of the European site considered in this assessment. The project, alone or in combination with other projects, is not likely to have significant effects on the European sites considered in this assessment. It is possible to rule out likely significant impact on any European sites considered in the assessment. It is possible to conclude that there would be no significant effects, no potentially significant effects and no uncertain effects if the project were to proceed.”

7.3.3 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 European Sites 000208 and 004015, or any other European site, in view of the site’s Conservation Objectives, and a Stage 2 Appropriate Assessment (and the submission of a NIS) is not, therefore, required.

7.4 **EIA Screening**

7.4.1 Having regard to nature of the development comprising a single rural house connected to the public mains and the absence of any significant environmental sensitivity in the vicinity/the absence of any connectivity to any sensitive location,

there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

8.0 Recommendation

- 8.1. It is recommended that permission be refused permission for the reason set out below.

9.0 Reasons and Considerations

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005. Furthermore, the subject site is located in an area that is under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area. Having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area. It is considered, therefore, notwithstanding the provisions of the Fingal County Development Plan 2017-2023, that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. Furthermore, the development is contrary to the criteria for eligible applicants from the rural community for planning permission as set out in Table RF03 of the Fingal County Development Plan 2017-2023 given that a dwelling for a family member on the basis of close family ties has already been granted planning permission. The proposed development would, therefore, be contrary to the policies set out in the Guidelines, the National Planning Framework and the development plan and would be contrary to the proper planning and sustainable development of the area.

Erika Casey
Senior Planning Inspector

11th December 2018