



An  
Bord  
Pleanála

## Inspector's Report ABP-304262-19.

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<b>Development</b>	Retention of ancillary residential structure.
<b>Location</b>	'Willsboro Stables', Kilkee Lane, St. Margaret's, Co. Dublin.
<b>Planning Authority</b>	Fingal County Council.
<b>Planning Authority Reg. Ref.</b>	F19B/0020.
<b>Applicant</b>	Gerard McLeod.
<b>Type of Application</b>	Retention Permission.
<b>Planning Authority Decision</b>	Refused.
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Gerard McLeod.
<b>Observer(s)</b>	DAA.
<b>Date of Site Inspection</b>	19 <sup>th</sup> July, 2019.
<b>Inspector</b>	Patricia-Marie Young

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## 1.0 Site Location and Description

- 1.1. The irregular L-shaped appeal site has a stated 0.669ha and it lies on the southern side of the restricted in width, meandering in alignment and poorly surfaced Killeek Lane, c0.5km to the east of its T-junction with the Kilreesk Road and c2.3km to the west of its T-junction with the R108 in the Townlands of Killeek, in north county Dublin. The site lies c4.km to the North East of Junction 2 on the M2 Motorway and c5.3km to the west of the M1 Junction 3 as the bird would fly.
- 1.2. The appeal site forms part of a larger parcel of unkempt land that collectively contains a 2-storey detached dwelling house, several other structures including stables, sheds, timber structures and on the adjoining land a horse trotting track. Collectively the appeal site area and the adjoining land to the west that contains the aforementioned trotting track is referred to as 'Willsboro Stables'.
- 1.3. Though the surrounding area is rural in its character it does contain several commercial through to industrial type uses and together with the prevalence of one-off detached dwellings has diminished the areas rural landscape character.

## 2.0 Proposed Development

- 2.1. Retention permission is sought for a development consisting of a detached timber clad and framed structure with a stated floor area of 92m<sup>2</sup> and its stated use as an ancillary residential structure to the existing 4-bedroom detached dwelling house on the site. The submitted description of the structure indicates that it is located c12m south behind the existing dwelling house and contains a television room, a bar and toilet facilities used by the applicant for recreational purposes. Retention permission is also sought for all associated works and landscaping associated with the structure for which retention is sought.
- 2.2. According to the planning application form the gross floor area of existing buildings on site is 666.03m<sup>2</sup>. The subject structure is served by an existing water connection to the public mains and is connected to an existing biocycle waste water treatment system located on site. The form also indicates that the method for surface water drainage is via the public sewer/drain and by an in-curtilage soak pit.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. The Planning Authority decided to **refuse** retention permission on the basis of their Planning Officer's report. The stated reasons read:

*"1. The development for retention, which has the internal fit out and appearance of a public house/bar, is out of character with the existing rural pattern of development in the area and contravenes the Greenbelt Zoning Objective 'To protect and provide for a Greenbelt', as outlined in the Fingal Development Plan, 2017-2023. The development for retention is, therefore, contrary to the proper planning and sustainable development of the area.*

*2. The scale and internal fit out and appearance of the games room/bar structure erodes the character of the greenbelt. The development through an intensification of such a use on site in a rural area would therefore seriously injure residential amenities and depreciate the value of property in the area.*

*3. The proximity of the existing surface water soakaway and percolation area to each other is in breach of the minimum separation distances as required by the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Dwellings (October 2009). In sufficient information has been submitted with regard to foul sewer and surface water details therefore it has not been adequately demonstrated that the development for retention would not be prejudicial to public health.*

*4. The development for retention, which has the internal fit out and appearance of a public house/commercial bar, by reason of its scale would set an undesirable precedent for other similar developments in the greenbelt, which would in themselves and cumulatively be harmful to the amenities of the rural area and be contrary to the proper planning and sustainable development of the area."*

### 3.2. Planning Authority Reports

3.2.1. **Planning Reports:** The Planning Officers report is the basis of the Planning Authority's decision. Their report indicates that there is enforcement history relating

to this site. It indicates that two structures were erected on site without the benefit of planning permission (P.A. Enforcement Reference No. 17/179A), i.e. the single storey L-shaped timber structure to which this appeal case relates and a dormer style timber storey structure which is still *in situ*.

The Planning Officer concluded that insufficient information has been submitted with regards to the foul and surface water drainage.

### 3.2.2. Other Technical Reports

**Water Services:** Request for additional information.

### 3.3. Prescribed Bodies

3.3.1. **DAA:** Requests that the Planning Authority seek further information. Their submission to the Planning Authority correlates with the observation they made to the Board.

3.3.2. **Irish Aviation Authority:** No observations to make on the development sought.

3.3.3. **Irish Water:** No objection.

### 3.4. Third Party Observations

3.4.1. None received.

## 4.0 Planning History

**P.A. Reg. Ref. No. F17A/0707:** Retention permission was **refused** for a detached timber structure and for the retention of a detached structure associated with the stables at this location. The reasons for refusal read as follows:

*“1. The units to be retained are located on lands zoned ‘GB’ where the stated development objective is to ‘Protect and provide for a Greenbelt’ in the Fingal Development Plan, 2017 – 2023. The scale of development and the haphazard nature of their location/positioning on site erodes the character of this greenbelt and would thus contravene materially the development objective for the area and would be contrary to proper planning and sustainable development.*”

2. *The scale, the layout and location of the two structures are inappropriate and negatively impact on the amenity of existing residential units on Killeek Lane. The development through an intensification of use on site in a rural area would therefore, seriously injure the amenities of the area and of property in the vicinity and would be contrary to the proper planning and sustainable development of the area.*

3. *The Applicant has failed to demonstrate to the satisfaction of the Planning Authority that appropriate foul and surface water drainage arrangements may be provided on site to serve the development. The development if retained would therefore be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.*

4. *The development if retained would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the amenities of the area and be contrary to the proper planning and sustainable development of the area.”*

**P.A. Reg. Ref. No. F11A/0292:** Planning permission was **granted** for the construction of a 2-storey dwelling house, vehicular entrance, wastewater treatment system, landscaping and all associated site works.

## 5.0 Policy and Context

### 5.1. Development Plan

- 5.1.1. The policies and provisions of the Fingal Development Plan, 2017-2023, apply. The site lies within an area zoned ‘GB’ – Greenbelt which has an aim to: “*protect and provide for a Greenbelt*”.
- 5.1.2. The stated vision for Greenbelt Land is to: “*create a rural/urban Greenbelt zone that permanently demarcates the boundary (i) between the rural and urban areas, or (ii) between urban and urban areas. The role of the Greenbelt is to check unrestricted sprawl of urban areas, to prevent coalescence of settlements, to prevent countryside encroachment and to protect the setting of towns and/or villages. The Greenbelt is attractive and multifunctional, serves the needs of both the urban and rural communities, and strengthens the links between urban and rural areas in a sustainable manner. The Greenbelt will provide opportunities for countryside access and for*

*recreation, retain attractive landscapes, improve derelict land within and around towns, secure lands with a nature conservation interest, and retain land in agricultural use. The zoning objective will have the consequence of achieving the regeneration of undeveloped town areas by ensuring that urban development is directed towards these areas.”*

5.1.3. Section 3.1 of the Development Plan states: *“an integral feature of the County is the open countryside and greenbelt lands that separate the urban areas which help to define the character of Fingal, providing a sense of place and local identity to individual towns and villages. The maintenance of this general pattern of development is important for the sound and sustainable development of the County”*.

5.1.4. In relation to Greenbelt land the Development Plan states that: *“the targeted development of strategically identified towns and villages will be supported by a greenbelt policy which will safeguard the innate rural value of the Fingal countryside. Greenbelt zoning will underpin the settlement strategy by ensuring:*

- *Existing urban areas within Fingal do not coalesce and merge into one another leading to unsustainable development and travel patterns.*
- *The identity and unique character of rural and urban areas in the vicinity of administrative boundaries will be maintained where this would be beneficial.*
- *That citizens can enjoy the visual and natural amenities of the countryside in close proximity to the urban areas in which they reside.*
- *Proposed development within the Greenbelt shall clearly demonstrate a functional need for such a location, and consistency with the established character of the landscape of the area.”*

5.1.5. Objective SS09 of the Development Plan states that the Planning Authority will seek to: *“promote development within the Greenbelts which has a demonstrated need for such a location, and which protects and promotes the permanency of the Greenbelt, and the open and rural character of the area”*.

5.1.6. Chapter 3 of the Development Plan deals residential development.

5.1.7. Section 11.6 of the Development Plan in relation to ancillary uses state that *“planning permission sought for developments which are ancillary to the parent use, i.e. they rely on the permitted parent use for their existence and rationale, should be considered*

*on their merits irrespective of what category the ancillary development is listed in the 'Zoning Objectives, Vision and Use Classes' section of this Chapter". Objective Z06 further reiterates this approach.*

## **5.2. Natural Heritage Designations**

- The appeal site lies c5.6km to the south west of Special Area of Conservation: Malahide Estuary SAC (Site Code: 000205).

## **5.3. Environmental Impact Assessment/Screening**

- 5.3.1. Having regard to the nature and scale of the development sought under this application, the residential zoning of the site and its setting, the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. I consider that the need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

- 6.1.1. The grounds of appeal can be summarised as follows:
- The development sought is fully compliant with relevant planning policy provisions.
  - The structure for which retention is sought is ancillary to the main dwelling and is therefore permissible under the Greenbelt zoning.
  - The scale of the structure is appropriate as it is smaller than the existing dwelling.
  - This development does not adversely impact on the Greenbelt Zone given its limited visibility in its landscape context.
  - The surface water soakaway and percolation area were previously approved under P.A. Reg. Ref. No. F11A/0292.
  - This development does not impede on the privacy of residential properties in its vicinity.
  - This development will result in no negative impact on Natura 2000 sites.



- This structure is not accessible or available to the general public and as such it should not be referred to as a public house and/or bar. This structure is for private use only and its interior design is an irrelevant consideration.
- This development would not result in the existing urban area coalescing.
- The scale and nature of the structure is less than existing farm buildings to the south of the site and is significantly lower than the existing dwelling. In addition, the sloping nature of the site results in the subject structure having lower finished ground floor levels to the existing dwelling house.
- The appellant is willing to abide by any conditions the Board may impose and if necessary relocate the soakaway in order to comply with the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Dwellings, 2009.
- The existing biotank has capacity to accommodate the additional usage arising from this structure.
- The wastewater and surface water concerns could have been dealt with by way of further information or conditions.
- Several properties along Killeek Lane contain large ancillary buildings to the rear and side.
- This development adds value to the subject property.
- The appellant seeks that the Planning Authority's decision is overturned.

## 6.2. Planning Authority Response

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

- Should the Board be minded to grant retention for the development sought under this application it is requested that a Section 48 financial contribution be imposed by way of condition.

## 6.3. Observation

6.3.1. A letter of observation was received from DAA which can be summarised as follows:

- This development is located within the Inner Airport Noise Zone of Dublin Airport.
- Reference is made to Objective DA07 of the Fingal Development Plan, 2017-2023.

- It is requested that further information be sought or that their recommended requirements be imposed by way of condition.

## **7.0 Assessment**

### **7.1. Introduction**

7.1.1. By way of this application permission is sought to retain an existing detached timber clad and framed structure with a stated floor area of 92m<sup>2</sup> which is located c12m to the south and to the rear elevation of an existing 4-bedroom detached dwelling house site. The submitted description of the structure indicates that it contains a television room, a bar and toilet facilities used by the applicant for recreational purposes.

7.1.2. I consider that the main issues in this appeal case are as follows:

- Principle of Development
- Wastewater and Surface Water Drainage

7.1.3. I also consider the matter of Appropriate Assessment needs to be assessed.

### **7.2. Principle of the Development**

7.2.1. The first reason for refusal indicates that the Planning Authority considers that the scale of the development and the haphazard nature of the buildings location on site erodes the character of this greenbelt zoned land and would contravene materially the development objective which seeks to protect and provide for a greenbelt as set out in the Fingal Development Plan, 2017 to 2023.

7.2.2. The grounds of appeal argue that this is not the case and this development is a permissible development on greenbelt land that due to its lack of visibility from the public domain would not erode the visual amenities or other intrinsic attributes of the greenbelt land.

7.2.3. Having inspected the site and having had regard to the documentation submitted with this application I am of the view that the structure due to its size, design, location on site is not a subordinate or ancillary structure to the main dwelling house and it is of a size that it is capable of being occupied as a separate residential unit. According to the submitted documentation it contains 3 toilets and a kitchenette. The latter type of

development is strictly limited and requires compliance with the rural settlement strategy set out in the Development Plan which has not been provided as it is alleged that the structure would be for the private use of the occupants of the dwelling house as described.

7.2.4. Moreover, the necessity to provide such a structure remote from the main dwelling has not been demonstrated with any clarity and is not consistent with Objective SS09 of the said Development Plan which requires that applications demonstrate a need so that the Greenbelt is protected as is its open and rural character. No need for this structure has been demonstrated over and above permitted structures on site.

7.2.5. While I am cognisant that Section 11.6 and Object Z06 of the Development Plan in relation to ancillary uses to the parent use should be considered on their merits having regard to the following factors: the haphazard collection of buildings on this site both permitted and not permitted alongside; the ability of this structure to function as a separate residential unit without the required demonstration of compliance with the rural settlement strategy which strictly limits this type of development in Greenbelt zoned land; the lack of subordination of the structure when compared to the existing dwelling on site with its stated 92m<sup>2</sup> gross floor area; the significant pressure land in this area is under being designated as land under strong urban influence under the Sustainable Rural Housing Guidelines for Planning Authority's, 2005, and recognised as so under the National Planning Framework, 2018; the lack of any demonstrated need for the structure as opposed to a desire; and, the significant cumulative number of buildings on site, I consider to permit the retention of the development sought under this application would be inconsistent with the 'GB' land use zoning of the site and its setting. Thus, to permit the development sought would be contrary to the proper planning and sustainable development of the area.

### **7.3. Wastewater and Surface Water Drainage**

7.3.1. The third reason for refusal states that the Planning Authority is not satisfied based on the submitted information that appropriate foul and surface water drainage arrangements may be provided on site to serve the development. For this reason, it considers that the development if retained would therefore be prejudicial to public health and be contrary to the proper planning and sustainable development of the area.

- 7.3.2. The grounds of appeal argued that clarity and detail could have been requested by way of additional information or this matter could have been dealt with by way of condition.
- 7.3.3. However, I note that the appeal submission does not include any such clarity or additional detail in relation to these matters and of further concern the development on site fails to comply with the grant of permission for the development permitted under P.A. Reg. Ref. No. F11A/0292 as well as fails to demonstrate compliance with the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Dwellings, 2009, in terms of providing minimum separation distances required between soakaway and percolation areas. These facts can be seen clearly by way of an examination of the planning history of the site.
- 7.3.4. Considering the size of the structure for which retention is sought, the fact that it includes 3 toilets and a kitchenette, this application should have been accompanied by suitable professionally prepared documentation that demonstrated that the foul discharge for which it is attached to is sufficient to meet the additional discharge and that it is of a design that meets the required standards.
- 7.3.5. In addition to this the applicant has not demonstrated that the existing soakaway into which the games room is discharging also has sufficient capacity to meet the additional discharge from this structure.
- 7.3.6. I therefore concur with the Planning Authority that to permit the proposed development would be prejudicial to public health and is reason in itself to refuse permission for the development sought under this application.

#### **7.4. Appropriate Assessment**

- 7.4.1. The likelihood of impacts on European sites is in my view remote due to the limited nature and scale of the development sought alongside its significant separation distance from designated sites. Notwithstanding, on the basis of the information provided with the application, and in particular the lack of information in relation to effluent disposal and surface water disposal, the possibility of environmental pollution and impacts on water quality in its vicinity cannot be excluded. The potential for downstream impacts on the Malahide Estuary SAC (000205) and further to the east the Malahide Estuary SPA (004025) cannot therefore be excluded. Thus, on the

precautionary principal, I advise that the Board refuse permission for the development sought under this application.

## 7.5. Other Matters Arising

7.5.1. **DAA:** Should the Board be minded to grant retention permission for the development sought under this application I advise that it include the recommendations of the DAA as set out in their observation letter to the Board.

7.5.2. **Development Contributions:** Fingal County Council has adopted a Development Contribution scheme under Section 48 of the Planning and Development Act 2000 (as amended). The applicable scheme is titled the 'Fingal County Council Development Contribution Scheme, 2016 to 2020'. The development sought does not fall under the exemptions listed in the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48 Development Contribution in accordance with the Planning and Development Act 2000.

## 8.0 Recommendation

8.1. I recommend that retention permission be **refused** for the reasons and considerations set out below.

## 9.0 Reasons and Considerations

1. The site is located in a rural area that is zoned Greenbelt in the Fingal County Development Plan, 2017 to 2023, with an objective to "protect and provide for a greenbelt". The Board is not satisfied on the basis of the information submitted with the planning application and in response to the appeal that the development is in compliance with the Development Plan zoning objective and that it would not represent a haphazard or piecemeal form of development within the Greenbelt zone. The development would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The Board is not satisfied on the basis of the information submitted in relation to foul and surface water drainage and flood risk that the development would not be prejudicial to public health or pose an unacceptable risk of environmental pollution.

The development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector

24<sup>th</sup> July, 2019.