



An
Bord
Pleanála

Inspector's Report

ABP-307252-20

Development	Construction of two storey house, extension of existing driveway and associated site works at the rear.
Location	Drumnigh House (rear), Drumnigh Road, Portmarnock, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0059
Applicant(s)	Daniel Eames
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Daniel Eames
Observer	DAA
Date of Site Inspection	11 th August 2020
Inspector	Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.38 hectares, is located off on the western side of Drumnigh Road to the south west of Portmarnock. The site is part of the existing curtilage of Drumnigh House and is located to the rear of such. The site is to be accessed using the existing driveway and vehicular entrance off Drumnigh Road serving Drumnigh House. The appeal site is a field area to the rear of the existing house. The boundaries of the site are defined by an existing stone wall along the eastern boundary between the site and Drumnigh House, trees and hedgerow along the northern boundary, no defined boundary to the south and a wire fence along the western boundary. Adjoining uses/structures include Drumnigh House to the east. Trinity Gaels GAA pitches to the west, the remainder of the field area the site is taken from to the south and a wooded area to the north. The appeal site is within a 50kph speed limit zone.

2.0 Proposed Development

2.1. Permission is sought for a two-storey detached house, extension to existing driveway and associated site works. The proposed dwelling has a floor area of 170sqm and a ridge height of 8.6m. The dwelling features a pitched roof and external finishes including brick, cement render and concrete roof tiles. The dwelling is located to the rear of Drumnigh House (two-storey dwelling) and is part of its curtilage. The dwelling is to use the existing access and driveway serving Drumnigh House off Drumnigh Road.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on two reasons...

1. The existing vehicular entrance which currently serves Drumnigh House and is proposed to serve the infill dwelling is substandard and suffer from inadequate sightlines. The proposed development would represent an intensification of the use of this substandard access/egress. It is considered that significant works would be

required to be undertaken to lands located to the north of the proposed access which are not within the ownership of the applicant and as such could not be carried out. As such the proposed development would endanger public safety by reason of traffic hazard and is not in accordance with the proper planning and sustainable development of the area.

2. The site is located within the 'GB' zoning objective under the Fingal Development Plan 2017-2023-2023, the objective of which is to provide for a Greenbelt' and in a 'Rural Area under Strong urban Influence' in the 'Sustainable Rural Housing Guidelines for Planning Authorities' (DoEHLG, 2005). Furthermore, it is national policy in such areas under urban influence, as set out in national Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018, to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in such rural areas under urban influence. Having regard to the documentation submitted with the application, the applicant has not demonstrated his eligibility to be considered for a dwelling in the rural area of Fingal on the basis of 'close family ties'. The proposed development would, therefore. Be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning Report (03/03/20): The proposed access arrangement using an existing access was considered substandard and the applicant has failed demonstrate compliance with development plan rural housing policy. Refusal was recommended based on the reasons outlined above.

3.2.2. Other Technical Reports

Conservation Officer (04/02/20): The site is just outside Portmarnock ACA, the Conservation Officer was of the view the proposal would have no adverse impact on the character of such.

3.3. **Prescribed Bodies**

DAA (13/03/20): The site is located within the Outer Public Safety Zone of Dublin Airport. Further information required including existing and predicted noise environment with consideration of future airport growth, internal noise levels for habitable rooms and noise mitigation measures.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

4.1 No planning history on the appeal site.

5.0 **Policy Context**

5.1. **Development Plan**

5.1.1 The relevant Development Plan is the Fingal Development Plan 2017-2023. The site is zoned GB-Greenbelt with a stated objective to 'protect and provide for a greenbelt'. Residential development is permitted within this zoning subject to compliance with the Rural Settlement Strategy.

Objective RF09: 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.

Table RF03: Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing

i. One member of a rural family who is considered to have a need to reside close to their family home by reason of close family ties, and where a new rural dwelling has not already been granted planning permission to a family member by reason of close family ties since 19th October 1999. The applicant for planning permission for

a house on the basis of close family ties shall be required to provide documentary evidence that:

- S/he is a close member of the family of the owners of the family home.
- S/he has lived in the family home identified on the application or within the locality of the family home for at least fifteen years.

ii. A person who has been in employment in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community/economy for fifteen years prior to the application for planning permission, and has not already been granted planning permission for a new rural dwelling since the 19th October 1999. Documentary evidence of such employment is required.

iii. A person who is an immediate member of a rural family who has not been granted permission for a rural dwelling, since the 19th October 1999, and is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances. The application for a rural dwelling must be supported by two sworn affidavits from relevant and qualified professionals, with at least one from a registered medical practitioner. A qualified representative of an organisation which represents or supports persons with a medical condition or disability may supply the other.

It is to be noted that criterion no. (iii) applies in areas which have zoning objective, HA, as well as in areas with zoning objective GB and RU.

iv. A 'bona fide' applicant who may not already live in the area, nor have family connections there or be engaged in particular employment or business classified with the local needs criteria, subject to the following considerations:

Such applicants will be required to satisfy the Council of their long term commitment to operate a full-time business from their proposed home in a rural area, as part of their planning application.

The applicant will outline within a submitted Business Plan how their business will contribute to and enhance the rural community, and will demonstrate to the satisfaction of the Council that the nature of their employment or business is compatible with, and addresses and satisfies local needs, and will protect and promote the rural community.

The applicant will satisfy the Council that the nature of their employment or business is dependent on its location within the rural area so as to discourage applicants whose business is not location-dependent.

The applicant will demonstrate their commitment to the proposed business through the submission of a comprehensive and professionally-prepared Business Plan, and through submission of legal documentation that they have sufficient funding committed to start and operate the business.

Applicants whose business is not location-dependent will not be considered.

5.2 **National Policy**

5.2.1 Under the Sustainable Rural Housing: Guidelines for Planning Authorities (April 2005) the site is located in an Area under Strong Urban Influence.

5.2.2 National Planning Framework

Objective 19:

Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, 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 and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3 **Natural Heritage Designations**

5.3.1 None in the vicinity.

5.4 **EIA Screening**

5.4.1 Having regard to nature of the development comprising of the construction dwelling house and associated site works, 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.

6.0 **The Appeal**

6.1. **Grounds of Appeal**

6.1.1 A first party appeal has been lodged by J.McSweeney Architects on behalf of Daniel Eames, Drumnigh House, Drumnigh Road, Portmarnock, Co. Dublin. The grounds of appeal are as follows...

- The application is based on Objective RF09 of the Fingal Development Plan with it noted that no member of the applicant's family has sought or being granted permission for dwelling in this area since 19th October 1999.
- A detailed Traffic survey and report has been submitted to refute the first reason for refusal. Existing vegetation has been removed since the decision and has improved visibility. A set traffic lights have recently been installed on Drumnigh Road to serve a residential development and such will reduce traffic speeds on the road. The applicant is current residing in Drumnigh House and using the access so the proposal would not be an intensification of use of such.
- The applicant is residing the family home (Drumnigh House) and has done so since 1993. Supporting documentation was submitted including a letter from the local school. The appellant has submitted letter from the local golf club and Revenue Tax certificates to demonstrate residency at this location.

- A traffic report has been submitted and notes the speed limit at this location is 50kph and not 60kph as indicated in the Planning Authority's assessment. A traffic speed survey indicates that the prevailing speed of traffic does not exceed 60Kkph. A survey sightlines show that there is 67m available to the north and over 90m to south (2m setback) with the Planning Authority assessment noting that only 50m was available to the north. It is noted that the proposal is compliant with DMURs and that the Planning Authority used the TII standards instead of DMURS to assess visibility. It is noted that the applicant currently resides in Drumnigh House and has done for a significant period of time and the proposal is not a significant intensification of use of the existing access.

6.2. Planning Authority Response

6.2.1 Response by Fingal County Council.

- The Planning Authority have no further comment to make.

6.3. Observations

6.4.1 Observation by DAA.

- The site is located within the Outer Public Safety Zone of Dublin Airport. Further information or condition required to deal with issues concerning existing and predicted noise environment with consideration of future airport growth, internal noise levels for habitable rooms and noise mitigation measures.

7.0 Assessment

7.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Principle of the proposed development/Development Plan policy

Traffic

Design/visual amenity/pattern of development

Wastewater/public health

Appropriate Assessment

7.2 Principle of the proposed development/Development Plan policy:

7.2.1 The appeal site is in an area zoned GB-Greenbelt with a stated objective to 'protect and provide for a greenbelt'. Residential development is permitted within this zoning subject to compliance with the Rural Settlement Strategy. Permission was refused on the basis that the applicant has not demonstrated his eligibility for a dwelling in the rural area on the basis of 'close family ties' with reference to the location of the site in an Area Under Strong Urban Influence and Policy Objective 19 of the National Planning Framework.

7.2.2 The criteria for a rural housing applicant in the 'GB' zoning is under Table RF03 and is outlined above. The information on file indicates that the applicant lives in his family home at Drumnigh House and that he and parents moved to this location in 1993. The information on file includes a documentation in regards school attendance, local sports clubs etc. Table RF03(i) indicates that...

"i. One member of a rural family who is considered to have a need to reside close to their family home by reason of close family ties, and where a new rural dwelling has not already been granted planning permission to a family member by reason of close family ties since 19th October 1999. The applicant for planning permission for a house on the basis of close family ties shall be required to provide documentary evidence that:

- S/he is a close member of the family of the owners of the family home.
- S/he has lived in the family home identified on the application or within the locality of the family home for at least fifteen years".

I would consider based on the information on file that the applicant does comply with this provision under Table RF03 and is compliant with Rural Settlement Strategy under Development Plan policy.

7.3 Traffic:

7.3.1 The first reason for refusal is that the existing entrance is substandard and suffers from inadequate sightlines. The proposed development would represent an intensification of the use of this substandard access/egress. It was considered that significant works would be required to be undertaken to lands located to the north of the proposed access which are not within the ownership of the applicant and as such could not be carried out. As such the proposed development would endanger public safety by reason of traffic hazard and is not in accordance with the proper planning and sustainable development of the area.

7.3.2 The Transportation Section report notes that the speed limit at this location of 60kph and that the standards under DMURS does not apply at this location as it is not an urban road. It is noted that the TII standards apply at this location with a requirement for sightlines of 90m and that sightlines to the north of the existing access are inadequate and require alteration of lands outside of the applicants control to achieve the required standard. The appellant in their response and associated traffic report note that the speed limit is 50kph at this location and not 60kph as assessed by the Local Authority. A traffic speed survey indicates that the prevailing speed of traffic does not exceed 60Kkph. A survey sightlines show that there is 67m available to the north and over 90m to south (2m setback) with the Planning Authority assessment noting that only 50m was available to the north. It is noted that the proposal is compliant with DMURS and that the Planning Authority used the TII standards instead of DMURS to assess visibility.

7.3.3 Having inspected the site I can confirm that the site is within a 50kph zone and is in rural area that is a transitional zone on the edge of the urban area. I am satisfied that there are sightlines in excess of 90m in a southerly direction and up to 67m in a northerly direction as outlined by the applicant/appellant in their appeal response. I would note that the appeal site is in a rural area and not an urban area so DMURS does not strictly apply. I do however note that consideration must be given to the fact that the site is within 50kph speed limit zone. The existing entrance although to a period dwelling is well laid out and is a splayed entrance affording a reasonable

level of visibility at this location. I consider that such visibility is sufficient to allow for the turning movements associated with the existing dwelling and an additional dwelling as proposed without having an adverse impact in terms of traffic safety.

7.4 Design/visual amenity/pattern of development:

7.4.1 The proposal is for a two-storey dwelling to the rear. The site is part of the curtilage of Drumnigh, which is an attractive period dwelling (not a protected structure). The site is part of a field area to the rear of the existing dwelling and is to use an existing vehicular entrance and driveway serving such. The proposed dwelling is located on a flat site that is not highly visible in the surrounding area due to its location a significant distance from the public road and intervening vegetation and structures. I am satisfied that overall design and scale of the dwelling is satisfactory in the context of the visual amenities and character of the area and would have no impact in relation to the setting of the existing dwelling to the east.

7.5 Wastewater/public health:

7.5.1 The proposal entails installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation tests. The trial hole test notes that the water table level was not encountered in the trial hole (2.1m). The percolation tests result for T tests carried out by the standard method and for deep subsoils and/or water table and P tests for shall soil/subsoils and/or water table, indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The test results indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries). Based on the information on file and subject to appropriate conditions requiring compliance with the EPA Code Practice, I would consider that the proposal would be acceptable in the context of public health.

7.6 Appropriate Assessment:

- 7.6.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend a grant of permission subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Fingal County Development Plan 2017-2023 and to the nature, form, scale and design of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in the context of the visual amenity of the area, the amenities of adjoining properties, traffic safety and convenience, and satisfactory in regards to public health. The proposed development 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, 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. 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. 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.

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.

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. 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 and no surface water from the proposed development/site shall be allowed to discharge onto adjoining properties or the public road.

Reason: In the interest of public health.

4. The roof colour of the proposed house shall be blue-black, black, dark brown or dark-grey. The colour of the ridge tiles shall be the same as the colour of the roof.

Reason: In the interest of visual amenity.

5.

(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 11th day of February 2020, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition).

Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) 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 in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

6. 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. Any plants which die, are removed or become seriously damaged or diseased, within a period of 2 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.

7. 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 the 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.

Colin McBride
Planning Inspector

19th August 2020