



An
Bord
Pleanála

Inspector's Report

ABP-307320-20

Development	Change of use from single storey workshop to place of worship. The development also consists of the retention of works to the workshop
Location	Leaca Bán, Tooman, Lusk, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F20A/0038
Applicant(s)	Markus Josef Odermatt Manuel Ambrosio Sanchez Paul Fox
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Markus Josef Odermatt Manuel Ambrosio Sanchez Paul Fox
Observer(s)	None
Date of Site Inspection	5 th of August 2020
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The application site (stated area 1.5ha) is located in the rural area in the townland of Tooman, Lusk to the south west of junction 5 (M1) and is accessed via the local road network. 'Leaca Bán' is a detached dormer style dwelling set back from the road and located on a large landscaped site within a rural area. There is a gated entrance to the property and it is accessed via a surfaced driveway and there is a sizable surfaced area (not marked out) for onsite parking in front.
- 1.2. There is a large shed/former workshop/boathouse located to the north and rear of the dwelling house. This is a concrete rectangular type structure which is at a lower level than the house and externally appears split level. It is accessed via steps to the side of the house and an unsurfaced (hardcore) stepped ramp to the side of the property. Side windows which appear typical to a church type structure have been blocked up. The entrance door at the rear also appears as a church type door rather than that to a workshop.
- 1.3. The site is well screened by trees along the northern boundary. There is a roadside boundary hedge and trees and a ditch along the site frontage. The front and rear garden areas are laid to lawn and the rear garden area slopes downwards in a easterly direction. The septic tank is located in this area. There is play equipment in the rear garden area. The house and shed are well set back in the site and not very visible from the public road.
- 1.4. There are a number of dwellings in the vicinity of the subject property, including on the sites to the immediate north and south. The accommodation road is narrow and sightlines from the existing access appear adequate in a northerly direction but are more restricted due to a bend in a southerly direction.

2.0 Proposed Development

- 2.1. This is to consist of the following:
 - A change of use of the single storey workshop to a place of worship (186.5sq.m);

- Relocation of the existing vehicular access off the public road to the north to form a new shared vehicular access that will serve the new place of worship and the existing dormer dwelling on site.
- The place of worship to be served by 30no. car parking spaces and 2no. spaces serving the existing development.
- The works are to include the decommissioning of the existing septic tank that serves the dwelling on site and the implementation of a new wwts to serve both the existing house and the place of worship as well as all ancillary services and other works required to facilitate the development.

Retention Permission is sought for:

- Retention of works to the workshop that include the retention of the filling in of doors and windows on the west and north elevations of the building; retention of the removal of the rooflights above; as well as the retention of new double doors to the south elevation; and the retention of landscaping and paths.

2.2. Documentation submitted with the application includes the following:

- A letter from Marston Planning Consultancy providing an overview, description of and rationale for and assessment of the proposed development;
- Architectural drawings by Goodwin Architects;
- Site characterisation test details by Hydrocare Environmental;
- Technical note on traffic and transportation by Martin Peters and Associates.

3.0 Planning Authority Decision

3.1. Decision

On the 20th of March, 2020, Fingal County Council, decided on a split decision, i.e to **grant** retention permission subject to conditions for works to the workshop, including the filling in of doors and windows on the west and north elevations; the removal of roof lights; new double doors to the south elevation' and all landscaping and paths, at Leaca Bán and to **refuse** permission for the change of use of a workshop to a place of worship/church, the relocation of the existing vehicular access/provision of a

shared vehicular access and associated car parking, the decommissioning of the existing septic tank and provision of new wwts for the following 3no. reasons:

- 1. The subject site is zoned 'RU' 'protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built cultural heritage' in the Fingal Development Plan 2017-2023. The proposed development at this rural location is not proximate to any adjoining settlements, serves a non-local catchment, is significantly car dependant, and would therefore contravene materially the 'RU' zoning objective for the area and would be contrary to the proper planning and sustainable development of the area.*
- 2. The proposed development would contravene materially Objective PM85 of the Fingal Development Plan 2017-2023 and would be contrary to the proper planning and sustainable development of the area.*
- 3. The subject development would set an undesirable precedent for other similar developments, which would in themselves and cumulatively be harmful to the residential amenities of the area, would seriously injure the amenities and depreciate the value of property in the vicinity.*

3.2. Planning Authority Reports

3.2.1. Planner's Report

This had regard to the locational context of the site, planning history and policy and to the interdepartmental reports and to the submissions made. Their Assessment included the following:

- They note that this is an application for Permission & Retention at Leaca Bán.
- They have regard to the details of the proposed change of use as per the documentation submitted.
- They note that the dwelling will revert to and remain in residential use.
- They provide that the proposed development would contravene materially the *RU* zoning objective for the area and Objective PM85 as per the Fingal DP 2017-2023 and would be contrary to the proper planning and development of the area.

- Given the contingent nature of the proposal to replace the existing treatment system and the provision of a shared/relocated entrance with the proposed use of the workshop as a church it is recommended that permission for these elements be refused.
- The alterations to the workshop for which retention is sought are considered to be acceptable.
- The proposal is considered acceptable in terms of its impact on visual and residential amenity.
- They note Transportation Section concerns and lack of access to sustainable transport.
- The proposal will not impact adversely on Natura 2000 sites and an EIA is not required.

3.3. Other Technical Reports

Transportation Planning Section

They refer to Objective PM85 of the Fingal CDP and consider that the proposed location would be car-dependant and therefore unsustainable. They also have some concerns regarding sightlines from the proposed access.

Water Services Engineering Section

They have no objections subject to conditions.

3.4. Prescribed Bodies

Inland Fisheries Ireland

They note that the proposed development is located within the catchment of the Ballough River, a locally important salmonid system. They seek to ensure that strict measures be implemented to ensure that there is no pollution of surface water channels as a result of site drainage during the construction and operational phases of this development. They advise that a number of measures be implemented and that the relevant Guidelines be followed.

3.5. Third Party Observations

These were noted in the Planner's Report and concerns include the following:

- The application does not satisfy Objectives PM84/85 of the Fingal CDP 2017-2023 relative to locational context for places of worship.
- This is a narrow rural road and is not suited to an increase in traffic generated by the proposed development.
- They consider that the Traffic Survey results are underestimating traffic on the Walshestown road.

4.0 Planning History

The Planner's Report includes reference to the following relative to the subject site:

- Reg.Ref.FS5/046/18 – Ref. ABP-303267-20 - Section 5 declaration where the Board decided that the use of part of a dwelling house for use as private oratory for use of the visiting members of the congregation at Leaca Bán, Tooman Lusk, County Dublin is development and is not exempted development.
- Reg.Ref. XA0030 - Permission granted for a shed/workshop at Tooman, Lusk, Co. Dublin Applicant -T Broderick.

5.0 Policy Context

5.1. Fingal County Development Plan 2017-2023

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.*

Vision: *Protect and promote the value of the rural area of the County. This rural value is based on:*

- *Agricultural and rural economic resources*

- *Visual remoteness from significant and distinctive urban influences,*
- *A high level of natural features.*

Agriculture 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.

The site is indicated on Sheet no. 14 'Green Infrastructure 1' of the Fingal CDP as being within a *Highly Sensitive Landscape*.

There is an objective to *preserve views* to the west of the subject site.

Place Making

Chapter 3 refers to Placemaking. Section 3.6 to Community Infrastructure, Facilities and Services. Objective PM84 seeks to: *Facilitate the development of additional places of worship through the designation and/or zoning of lands for such community requirements and examine locating places of worship within shared community facilities, to be delivered through actively engaging with the community to understand diverse religious needs for a place of worship and consulting with faith communities to understand which ones are compatible for shared premises/sites.*

Objective PM85 seeks to: *Encourage and facilitate the development of places of worship in appropriate locations in urban centres and proximate to residential communities.*

Rural Fingal

The site is located in the rural area, outside of any rural settlement. Chapter 5 refers to and provides the policies and objectives for Rural Fingal. This includes Section 5.2 relevant to Fingal's Rural Settlement Strategy which includes regard to Housing in the Countryside, Rural Drainage and Transport and in Section 5.3 to the Rural Economy and Enterprise.

Movement and Infrastructure

Chapter 7 refers and Section 7.2 to Water Services. This includes regard to water and water conservation, foul drainage and wastewater treatment and surface water drainage. It notes that in unserviced areas and outside the main towns and villages, the main method of sewage disposal is by means of individual septic tanks and proprietary systems.

Objective WT06 seeks to: *Facilitate development in unserviced areas only where it has been 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.*

Development Management Standards

Chapter 12 – Section 12.10 refers to Movement and Infrastructure. This includes regard to Sustainable Transport. This includes: *For new developments, securing access onto the road network is a key issue, particularly in rural areas. The intensification of use of an existing access is normally preferable to the creation of a new access onto a rural road.*

Table 12.8 provides the *Car Parking Standards* and provides that for a *Church, place of worship – 1 per 5 seats.*

5.2. Natural Heritage Designations

The closest Natura 2000 sites (i.e. Rogerstown Estuary SAC and SPA) are c. 7km to the south east of the subject site. Skerries Islands SPA is c.10km to the east and the River Nanny and Shore SPA, c.11km to the north-east of the subject site.

5.3. EIA Screening

Having regard to the nature and scale of the proposed development 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.

6.0 The Appeal

6.1. Grounds of Appeal

Marston Planning Consultancy have submitted a First Party Appeal on behalf of the applicants. The basis of this appeal focuses on the reasons for refusal cited by the Planning Authority. Their grounds of appeal include the following:

Overview

- The PA have erred in their interpretation of the application in this instance on several grounds.
- The principle and objectives of the *RU* zoning under the Fingal CDP 2017-2023 does not prohibit against the change of use of the workshop to a place of worship; nor does the use materially contravene the *RU* zoning.
- Objective PM85 is very clear and concise and does not prohibit the establishment of places of worship in the rural zone as set out. The proposal should not be considered to be in material contravention.
- There are no grounds for the PA to conclude that granting of permission for the proposed place of worship would set an undesirable precedent that could lead to a cumulative negative impact on the residential amenity of the area.
- If the Board conclude that the applicant fulfils that the proposed development does not impact on local amenity; does not impact upon rural resources; and does not reflect a land use, in this context, that should be located in an urban setting; then permission must be granted.

Material Contravention

- Under the *RU* zoning there is no identification of churches as being permitted or not permitted within the *RU* zone or in material contravention.
- They note that community buildings can be permitted subject to them being in proximity to residential settlements and where they would not generate unacceptable traffic problems.

- They have submitted a traffic report by Martin Peters and Associates with the planning application that clearly outlines that the traffic generated by the proposed development would not generate traffic concerns.
- The only reasonable conclusion for the Board to reach is that the policies as outlined in this reason for refusal are unclear insofar as the proposed development is concerned.
- No consideration is provided as to whether Objective PM85 prohibits the development of Places of Worship in non-urban locations.
- They consider that there is a lack of clarity in the Council's reasons for refusal and refer to Section 37 (2)(b) (ii) and submit that Board are not precluded from granting permission by virtue of conflicting objectives in the DP.

Decision of the Planning Authority

- They submit that this appeal has taken due cognisance of the split decision of the PA. They note that it is clear that the issue at hand under this appeal is solely based on the principle of the use, rather than impact on amenity and landscape.
- They consider that the Council's reasons for refusal are obscure and lacking in clarity and refer to case law in this respect.
- The Council's decision fails to provide such clarity particularly given the wording and principles under the RU zoning and Objective PM85.
- They note that the Transportation Section Report warranted a request for further information rather than a refusal on traffic grounds.
- They refer to sightlines and refer the Board to relevant results of the Traffic Speed Survey and to current standards and guidelines.

Description of subject site and surroundings

- A history of the site and rationale for the proposed development is provided. A description of the existing and proposed development including relative to the religious services is provided.
- They provide that this application if permitted will address the warning letter to remove the religious use from the dwelling house and facilitate a permitted

use. They note that the proposed use will not alter the intensity of the use of the site.

Regard to Operations

- They submit that the proposed development will not diminish in any way the value of this rural area. They refer to Objective PM84 which seeks to facilitate places of worship and note that parking standards can be met.
- The proposed development will not generate unacceptable traffic issues and its location here, due to the widely geographically dispersed nature of the members of the church will generate as much travel/car user than if located in Drogheda or any other urban centre.
- The proposal as a private place of worship will not negatively impact upon agriculture or any rural economic resources.
- They provide details of the church operations and note its large catchment area and consider that it will not impact negatively on the rural area or have any impact on the surrounding environment.
- There is no potential for precedent or negative cumulative impact as a result of other places of worship seeking permission in this rural area.

Conclusion

- The First Party considers that this application must be taken on its merits and there can therefore be no assumption made under the RU zoning that the place of worship such as the proposed development amounts to a material contravention of the DP zoning of the site.
- They submit that the proposed development now before the Board has fully addressed all the concerns of the PA in relation to the impact of the Private Place of Worship on the RU zoning, Objective PM85 and the precedent that granting permission would set.
- Notwithstanding the arguments made in this appeal, they would be willing to accept a two year temporary permission to enable the PA to review the implemented development following this period.

- They request the Board to overturn the decision of the PA and to grant permission for the proposed development, in the context of good planning practice, and the proper planning and sustainable development of the area.

6.2. Planning Authority Response

They have regard to the Grounds of Appeal and it remains their opinion that the proposed development at this rural location is not proximate to any adjoining settlements, serves a non-local catchment, is significantly car dependant, and would therefore contravene materially the 'RU' zoning objective for the area and would be contrary to the proper planning and sustainable development of the area.

The proposed development would also contravene materially *Objective PM85* of the Fingal CDP and would be contrary to the proper planning and sustainable development of the area and if permitted would set an undesirable precedent for other similar development, which would in themselves and cumulatively be harmful to the residential amenities of the area, would seriously injure the amenities and depreciate the value of property in the vicinity. They request the Board to uphold their decision.

7.0 Assessment

7.1. Principle of Development and Planning Policy

- 7.1.1. It is noted that the site is located in the rural agricultural area and is not within or close to the outskirts of a settlement. The area is within the 'RU' Rural zoning where the Objective seeks 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.* As noted in the Policy Section above the vision seeks to: *Protect and promote the value of the rural area of the County.*
- 7.1.2. It is noted that as per the Use Classes Related to the Zoning Objective a church or place of worship is neither listed as Permitted in Principle nor Not Permitted. A Note is included at the base of this table which provides: *Uses which are neither 'Permitted in Principle' nor 'Not Permitted' will be assessed in terms of their contribution towards the achievement of the Zoning Objective and Vision and their*

compliance and consistency with the policies and objectives of the Development Plan.

- 7.1.3. The Council refused permission for the proposal for 3no. reasons, including materially contrary to the RU zoning objective, contrary to Objective PM85 (locational context for places of worship) and that it would set an undesirable precedent for other similar developments contrary to the proper planning and sustainable development of the area. Their response to the grounds of appeal are also noted.
- 7.1.4. The First Party submit that as a Place of Worship is neither permitted nor, not permitted within the RU zone, the proposal must be taken on its own merits and the contribution towards the achievement of the zoning objective and vision under the Development Plan. They have regard to the Council's 3no. reasons for refusal and as noted in their grounds of appeal do not consider that the proposal is in material contravention of these policies and objectives.
- 7.1.5. They note that this is a Private Place of Worship and will allow existing services to be moved from the house (which is currently unauthorised) and facilitate religious services for their congregation in the wider community. They provide that the proposal will not impact negatively on road safety or drainage and on the rural area. They submit that the proposed change of use of the workshop will not result in an intensification of the use or set an undesirable precedent.
- 7.1.6. While this proposal is being considered *de novo* regard is had to the documentation submitted, and to proposed development including the retention element and to the issues raised in the Council's 3no. reasons for refusal including the issue of material contravention in this Assessment below.

7.2. Background and Rationale

- 7.2.1. Regard is had to the Planning History and it is noted that the Board recently decided a Referral under Section 5 (Ref. ABP-303267-18 refers) that determined that the use of part of a dwelling house for use as a private oratory for use of the visiting members of the congregation at Leaca Bán, is development that is not exempted development. On my previous site visit relative to the Referral Case, I visited the property and then noted the 2 interlinking front rooms in use as the chapel/oratory and another smaller room as a sacristy. This proposal is for the change of use of the

workshop/shed to a place of worship. It is submitted that this will facilitate the relocation of the religious services from the existing house on site and return the use of the dwelling house to domestic purpose. Also, that it will address the current unauthorised situation.

- 7.2.2. It is noted that the shed/workshop was permitted under Reg.Ref. XA30 (1982) has been constructed and is set back c.200m from the public road. It is provided that the originally permitted shed contained a double height and pedestrian doors either side to the front, four windows in the north elevation and a pedestrian door at the rear. All these apart from a pedestrian door to the front and rear have been filled in. Condition no. 7 of the 1982 decision required that the existing vehicular entrance be relocated to the north of the south-west corner of the site. They provide that this revision was never implemented. They also note that Condition no.4 required that any change of use would be subject to a new planning permission, as is the case in this instance.
- 7.2.3. The First Party detail the merits and rationale of the application and provide that this proposal complies with planning objectives and policies and the proper planning and development of the area. However, it is of note that whereas a workshop unit was originally permitted and ancillary to the dwellinghouse, the use of the unit as a place of worship is a change of use and is separate from domestic use and has to be authorised.

7.3. Retention Permission

- 7.3.1. Details submitted note that the proposed development will consist of both new and already undertaken works. It is noted that the retention elements are minor and have not materially altered the relationship of the workshop/shed with the existing dormer dwelling. They provide that the workshop has not been in use for a number of years and this had led to the closing up of various opes and doors that include the doors and windows on the west and north elevations of the building and the removal of rooflights above. New double doors have been inserted to the south elevation which also form part of the retention application. They submit that in order to achieve a reasonable and safe access from the higher ground a new pathway has been created with associated landscaping works. These alterations now form part of the retention element of the application. They also provide that no substantial internal

works have been undertaken to the workshop/shed that would have required permission to be sought beyond making the building sound.

- 7.3.2. On site I inspected the building and noted that the aforementioned windows and doors had been blocked up. The window formations (now blocked up) appeared relatively church like as does the existing door on the southern elevation. The latter is shown on the southern elevation as ‘existing arched door fitted; not previously permitted.’
- 7.3.3. I note that the Council has permitted these retention aspects of the application and would not object to these works. I would however, have some concerns if the pedestrian access route were to be permitted to the building as a place of worship, as it is unsurfaced with a relatively steep unlevelled path and would not be suited for wheelchair users and people who are mobility impaired. However, if the route is only for use as workshop incidental to that of the domestic dwelling, I would have no objections.

7.4. Regard to Change of Use and Precedent

- 7.4.1. The building is at a lower level than the dormer bungalow. It has a shallow pitched roof and varies in height from c.5.6m to 4.6m. The proposed works are internal and the proposal does not include any extensions to the existing building. The former workshop building (now vacant) is connected to the garage but not to the dormer bungalow. The floor plans submitted show that the floor area for the proposed change of use is c.186sqm. The layout shows that the church is to include an altar to the front, pews and a sacristy to the rear. The main entrance is to be by the church door at the rear. There are also fire doors front and rear. As noted in the retention section above, otherwise former window and door openings have been blocked. As noted on site the building is currently in vacant use but has been the subject of internal renovations.
- 7.4.2. Details submitted with the application provide that membership is strictly controlled and there is c. 140 members of the church in Ireland, and the congregation is spread in the surrounding counties. The First Party submit that the nature of the church (Palmarian Catholic Church) and its membership is inclusive and numbers attending are generally small and that therefore it will not set an undesirable precedent. They

provide that this is a private church and its closed and private membership is unique. Therefore, the issue of precedent is not one that should be open to question or consideration in this instance.

- 7.4.3. They provide details of operations and note that the church would generally be open for Mass at 10.30 and 7.30pm each day when the priest is in attendance. Larger attendance tends to be at weekends with only 30-40 attending during the weekdays. Throughout the year it is proposed that the church will be open for prayers on a regular basis at these times.
- 7.4.4. I did not note any signage advertising the church on the day of my site visit. It is provided that there are to be no signs or other indication of a church being in place at the site. The First Party submit that from a planning and development perspective the church facility will remain on-site, apart from the formalising of car parking that will be finished in fully permeable gravel to ensure the maximum permeability on site.

7.5. **Material Contravention**

- 7.5.1. As noted above permission for this proposal has been refused by the Council for 3no. reasons which include reference to material contravention. These include that the proposal would materially contravene the Rural 'RU' zoning objective and objective PM85. The Council consider that the proposed use not close to a settlement, with all its associated comings and goings is not suited to a rural context or compatible with the objective and vision for the rural, agricultural area.
- 7.5.2. Section 34(6) of the Planning and Development Act 2000 sets out the procedure under which a planning authority may decide to grant permission for a development which they are concerned would contravene materially the development plan or local area plan. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention. These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning guidelines and policy for the area etc., where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.

- 7.5.3. In this instance the proposed development is clearly not of strategic or national importance, there is no policy or guidelines advising that such a development should be permitted in this rural area. The First Party request the Board to conclude that they are not precluded from granting permission by virtue of paragraph (b)(ii) of subsection 37(2) of the 2000 Act having regard to the conflicting objectives in the DP, and the lack of clarity in relation to the matters raised in these particular reasons for refusal.
- 7.5.4. They contend that the proposed development does not materially contravene the 'RU' zoning objective or Objective PM85 (locational context of places of worship) and they note the Board has the authority to overrule the Planning Authority (S37(2)) of the Planning and Development Act 2000 as amended, where it can consider that the development is not a material contravention. They provide that the proposal does not undermine the RU zoning nor conflict with Objective PM85. They consider that there is a lack of clarity in the Council's reasons for refusal relative to the interpretation of these objectives. They submit that the proposal does not impact adversely on the rural area and that as documented the subject site is an entirely appropriate location for the Private Place of Worship, which will not set an undesirable precedent. They therefore contend that the proposal will not materially contravene the aforementioned objectives.
- 7.5.5. Regard is had to the 'RU' zoning objective and to the vision for this as noted in the Policy Section above. It is noted that the area is visually and spatially remote from a settlement. As noted above the development is neither 'permitted' nor 'not permitted' in the zoning. Having regard to the documentation submitted, it is not considered that the proposal adds value to the rural area as anticipated by the objective, is related to the proximate local community or provides a service that needs to locate in this rural agricultural area. Therefore, it is not considered that the proposal provides a contribution or is consistent with the said zoning objective or policies in the DP.
- 7.5.6. Regard is also had to Objective PM85 which seeks to: *Encourage and facilitate the development of places of worship in appropriate locations in urban centres and proximate to residential communities.* Clearly the site is not located in an urban centre or proximate to the community it serves. It is noted that the documentation submitted refers to distance travelled by members of the congregation and the private nature of the services. Therefore, the congregation is largely car-based and it

could not be said to be proximate to residential communities or sustainable in view of the car based nature. The basis for Objective PM85 is clear in encouraging and facilitating the development of places of worship in appropriate locations in urban centres and proximate to residential communities. Having regard to these issues, I would consider that it is clear the proposal would not comply with and would materially contravene these objectives.

7.6. Regard to Case Law

- 7.6.1. The First Party consider that the Council's reasons for refusal are obscure and lacking in clarity and refer to case law in this respect. They refer to: O'Flynn Capital Partners v Dun Laoghaire Rathdown County Council Judgment [High Court 2015 No.514 J.R] of Haughton J (dated 10/8/2016) which sets out the reasons for refusal should be clear and unambiguous. They provide that this decision fails to provide such clarity particularly given the wording and principles under the RU zoning and Objective PM85. A copy of this Decision is included in the Appendix of this Report.
- 7.6.2. Nevertheless, while regard is had to this judgment, it must be noted that there are variations in case law depending on the circumstances and each application is considered on its merits. Also, the wide range of issues brought up in the case referred to are relevant to a larger more complex case for a different location and development plan and scheme of development in an SDZ rather than the change of use proposed in the rural area as per the current application.

7.7. Access and Parking

- 7.7.1. The existing entrance is centrally located on site and is set back from the road. Due to a bend on the road sightlines are restricted in a southerly direction. This proposal includes the removal of the existing driveway and entrance and the establishment of a new one further to the north. The issue is whether it is deemed to be desirable and in the interests of traffic safety to provide this alternative entrance (shown c.20m further to the north), to the existing one which does not have adequate sightlines in the southerly direction.
- 7.7.2. Sightlines while not optimal, are somewhat better in the revised location particularly in a southerly direction. I noted on site that the location of the proposed new

entrance may impact on a mature tree within the roadside boundary hedge. I would, recommend if the Board decides to permit that it be conditioned that roadside trees be protected during construction works.

- 7.7.3. The existing boundary screening is to be maintained which is particularly important along the northern site boundary. However, it is noted that the northern side of the front lawn will be broken up due to the proposed parking area and relocation of the driveway. It is considered that the scale of the surfaced parking area for c. 30 cars will have some impact on the visual amenity of the rural area.
- 7.7.4. As part of the documentation submitted, Martin Peters Associates Consulting Engineers, have submitted a Technical Note (TN01 -Transport). This notes that the Walshestown Road (accommodation Road) is 3.5 – 4.0m wide and is a typical rural road serving limited residential properties. An Automatic Traffic Counter (ATC) was installed on the road close to the site access in May 2019 to provide information on traffic volumes, vehicle types and speeds. The results of the TC are attached as Appendix A. Details are provided of the local road network.
- 7.7.5. Figure 4.1 shows the location of the proposed access relative to the existing access. The sight lines at the proposed access have been identified using a design speed of 60kph and details are given of visibility splays required (2.4m x 70m) which they provide is achievable in the proposed location of the access. The existing driveway is to be closed off and the internal driveway modified to provide access to the proposed church parking area as well as the existing property. Figure 4.2 shows the proposed internal arrangement.
- 7.7.6. Details submitted provide that the revised access will offer improved sightlines that having undertaken following an analysis of speeds along the road adjacent to the west of the site. They also provide that traffic will be low on the public road and will not have an adverse impact on the surrounding road network.
- 7.7.7. Regard is had to Table 12.8 of the DP which provides the Car Parking Standards and to the on-site parking provision proposed for a church/place of worship. As noted in the documentation submitted, due to the geographical spread of members it is essential that adequate car parking be provided to serve the church. Therefore, that the provision of 30 car parking spaces plus the residential spaces serving the

existing house (2no. for the priest and a visitor) ensures that the requirements of the DP are complied with based on current attendee levels and car occupancy levels.

- 7.7.8. In summary it is provided that this Technical Note has demonstrated that the proposed Church can be satisfactorily accessed by a junction with appropriate sight lines and that the additional traffic associated with the development will be imperceptible. Therefore, the Report concludes that the development would not have any adverse effect upon the surrounding road network.
- 7.7.9. It is noted that the Council's Transportation Planning Section concluded that the proposed place of worship is car-dependent and therefore unsustainable. They also noted that there is no clear, safe pedestrian route from the parking area to the place of worship and that this should be addressed. They advised that the applicant should provide a sightline drawing showing sightlines of 80m in either direction from the proposed access.
- 7.7.10. If the Board are mindful to grant these concerns should be met by condition. However, if they are mindful to refuse the proposed change of use to a place of worship, it is considered that there are no need for the works to provide the relocation of the entrance, shared driveway and on-site parking area and I would recommend that these be refused in the context of the wider application.

7.8. Drainage

- 7.8.1. The proposal also includes the removal of the existing septic tank and its replacement by a new waste-water treatment plant to the rear that is to serve the church and the house. It is noted that the on-site drainage system will be linked for the dwelling house and the church. The proposal is to include a soakaway to the north east of the church.
- 7.8.2. The Site Layout Plan submitted shows the existing and proposed scenarios relative to the drainage issue regarding the disposal of effluent. It is noted that the site slopes to rear and the location of the proposed waste water treatment plant is shown further set back on the site.
- 7.8.3. It is submitted that the current house is served by an outdated septic tank that is to be upgraded into a modern wwts, the details of which are attached to the Hydrocare Environmental Report that accompanies the Site Characterisation Report that has

been undertaken and the mechanism that is proposed to replace the outdated septic tank to serve the house and the proposed change of use. Also, that this will improve the environmental impact of the proposal.

- 7.8.4. The requirements are set out in the EPA Code of Practice for Wastewater Treatment Systems and Disposal Systems Serving Single Houses (2010) or for larger developments, the EPA Wastewater Treatment Manuals – Treatment Systems for Small Communities, Business, Leisure Centres and Hotels (1999).
- 7.8.5. The Site Characterisation Form relates to a population equivalent of 15. It provides that ground conditions usually favour secondary wastewater treatment. Also, that groundwater will require protection per R2.1 protection response. The depth to the water table is given as 1.5m. Percolation tests reveal different test results with an average T=67. Average P=32. It is provided that there is good topsoil percolation, well suited for underlying a polishing filter as per EPA COP 2009. The recommendation is to install a Packaged wastewater treatment and polishing filter. Layout and Section drawings have been submitted.
- 7.8.6. Hydrocare Environmental Ltd also note that they have designed the soakaway per current standards based on the total impermeable area outlined and Met Eireann's Extreme Rainfall Return Periods and details are provided of this.
- 7.8.7. There is a stream to the east (rear) of the site. Inland Fisheries Ireland concerns have been noted relative to the catchment of the Ballough River. They advise that strict measures be implemented to ensure that there is no pollution of surface water channels as a result of site drainage during the construction and operational phases of this development. They refer to and seek clarification relative to drainage issues referred to in the Hydrocare Report. They provide that the wwts be designed in accordance with the EPA Wastewater treatment Manual for Small Communities, Business, Leisure Centres 2010, and that there be no contamination of surface or groundwater consequent to the site development. They recommend conditions.
- 7.8.8. It is noted that the Council's Water Services Department has no objections subject to conditions. Having regard to these issues, and taking into account the size and locational context of the site in the rural area, it is not considered that the proposed drainage system is in itself a particular issue. However, this must be seen in the context of the principle of the proposed change of use which as noted above is not

considered to be appropriate to or in the interests of the proper planning and sustainable development of the rural area. Also, cumulatively relative to the proliferations of wwts in the rural area. Therefore, if the Board decides to refuse permission for the proposed development in principle, then there is no need for the proposed upgrade of the waste water treatment system to be granted.

7.9. Regard to issue of Temporary Permission

- 7.9.1. The First Party provides that notwithstanding the arguments made in this appeal if the Board have concerns in relation to the use in an RU zone and its impact on the immediate area they would be willing to accept a two year temporary permission. They consider that this will enable the PA to review the implemented development following the period of such a condition.
- 7.9.2. Regard is had to Section 7.5 of the Development Management Guidelines 2007 which provides guidelines about when a temporary permission maybe appropriate. This includes: *It must be remembered that the material considerations to which regard must be had in dealing with applications are not limited or made different by a decision to make the permission a temporary one.*
- 7.9.3. Therefore I would not consider it appropriate to grant a temporary permission if the Board considers the proposal to be in material contravention to the RU zoning objective and Objective PM85 of the Fingal Development Plan 2017-2023.

7.10. Screening for Appropriate Assessment

- 7.10.1. Having regard to nature and scale of the development and the nature of the receiving environment and the distance and lack of connections to the nearest European sites, no Appropriate Assessment issues arise and it is not considered that the 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 split decision that retention permission be **granted** subject to conditions for works to the workshop building, including the filling in of doors and

windows on the west and north elevations; the removal of roof lights; new double doors to the south elevation' and all landscaping and paths, at Leaca Bán and to **refuse** permission for the change of use of a workshop to a place of worship/church, the relocation of the existing vehicular access/provision of a shared vehicular access and associated car parking, the decommissioning of the existing septic tank and provision of new wwts for the reasons and considerations below.

9.0 Reasons and Considerations

While it is considered that the retention elements are of a minor nature and acceptable, the proposed change of use of the workshop building to place of worship for use by members of the dispersed congregation would represent an intensification of use, that is not considered to be acceptable or sustainable in the rural area, distant from a settlement and lacking in public transport and community facilities. Therefore, the proposed change of use would be contrary to the proper planning and sustainable development of the area.

Schedule 1

Retention permission is granted for works to the workshop, including the filling in of doors and windows to the west and north elevations; the removal of rooflights; new double doors to the south elevation; and all landscaping works and paths subject to the following conditions:

1. The development shall be retained 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 within 3 months of the date of this permission

Reason: In the interest of clarity.

2. The use of the building shall be for workshop and purposes ancillary to the use of the dwelling house.

Reason: In the interest of clarity.

Schedule 2

The proposed change of use of the single storey workshop to a place of worship (186.5sq.m); relocation of the existing vehicular access off the public road to the north to form a new shared vehicular access that will serve the new place of worship and the existing dormer dwelling on site, associated car parking and new wastewater treatment system to serve both the existing house and place of workshop as well as all ancillary service and other works required to facilitate the development is refused for the following reasons and considerations:

1. The proposed change of use from a workshop associated with a dwellinghouse to a place of worship for a dispersed congregation in an unserviced rural area, distant from a settlement and not related to agriculture and rural related resources or for the benefit of the local community would be car dependent and lead to additional traffic generated on the narrow local road network and to traffic hazard where sightlines are deficient at the entrance and as such would materially contravene the 'RU' Rural zoning objective and Objective PM85 of the Fingal County Development Plan 2017-2023. It would set an undesirable precedent for such uses unrelated to the rural area, which are more suited to appropriately zoned and serviced land in an urban area and would be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

27th of August 2020