



An
Bord
Pleanála

Inspector's Report

ABP-308146-20

Development	House - NIS submitted
Location	Bellurgan, Dundalk, Co. Louth
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	191087
Applicant(s)	Barry Hynes.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	David McMahon.
Observer(s)	None.
Date of Site Inspection	3 rd of December 2020.
Inspector	Stephanie Farrington

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.5ha, is located at Bellurgan, Dundalk, Co Louth. The site is currently undeveloped is relatively flat and open with hedgerow and trees along the eastern site boundary. A small stream runs along this boundary and connects to Dundalk Bay. Levels within the site fall from 4.3m to the north to 3.4m to the south.
- 1.2. The site is set back from the public road and accessed via a private laneway which currently serves one dwelling on the adjoining site to the north. The surrounding area is characterised by single rural dwellings and agricultural buildings. A commercial kitchen manufacturing premises is situated to the south of the site.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a 2 storey dwelling with attached car port to side elevation, detached domestic garage, new vehicular site entrance from the adjacent private laneway, site boundaries, a wastewater treatment system and percolation area and all associated site development works and services.
- 2.2. Revisions were made to the design and layout of the proposed dwelling in response to the planning authority's request for further information. The revised proposal included the removal of the attached car port, and the relocation of the dwelling and garage, percolation area and waste water treatment system Water supply is proposed via a new connection to the existing watermain which runs along the access road to the west of the site.

3.0 Planning Authority Decision

3.1. Decision

Louth County Council issued a decision to grant permission for the development subject to 10 no. conditions. The following conditions are of note:

- Condition no. 2: Occupancy Condition
- Condition no. 5: Design, external finish and architectural standard of the proposed dwelling house.
- Condition 8: Wastewater Treatment and Disposal System shall comply with the EPA Code of Practice. *“The replacement sub soil, being proposed in relation to the effluent tertiary treatment, shall be tested and placed insitu as per the requirements of the EPA Code of Practice 2009. Details including test results to be furnished to the planning authority for their written approval prior to commencement of development”.*

3.2. Planning Authority Reports

3.2.1. Planning Reports (Initial Report dated 11th of February 2019)

- The documentation submitted demonstrates that the applicant is a longstanding resident of the rural area (Mullatee) and has a rural housing need. In this regard it is stated that the applicant has satisfied local needs criteria.
- The proposed dwelling will not impact on adjoining properties in terms of overlooking, overshadowing, overbearing or loss of light.
- The proposal complies with minimum site area and maximum gross floor areas outlined under Policy SS51 and SS52 in the Development Plan.
- The report cross refers to correspondence with Heritage Officer and recommendation for an AA Screening Report.

A request for further information is recommended on the following issues:

- Flood Risk Assessment to be submitted – which addresses fluvial flooding risk for the proposed development.
- Further Details on the Effluent Treatment System and Percolation Area
- Revisions to the design of the proposal are requested to reduce bulk and massing of the proposal and simplifies window arrangements
- Submission of an Appropriate Assessment Screening

- Indicate timeframe for removal of unauthorised shipping container on site
- Revised public notices

3.2.2. Planners Report (17th of August 2020)

- Grant of permission recommended subject to conditions.

3.2.3. Other Technical Reports

Infrastructure Department (31st of January 2020) recommends a request for further information and submission of a Flood Risk Assessment.

Infrastructure Department (18th of June 2020) no objection to the proposal subject to condition.

Environment Section (17th of January 2020) recommends a request for further information in relation to details of the proposed effluent system including details of its supervision and installation, details of tertiary effluent system required, mark ground water flow direction on site map and requirement for flood risk assessment.

Environment Section (16th of June 2020) no objection to the proposal subject to condition.

3.3. **Prescribed Bodies**

Irish Water: No objection

3.4. **Third Party Observations**

Two submissions were received within the statutory timeframe. The following provides a summary of the points raised:

- Questions the applicant's compliance with local needs qualifying criteria.
- Area is a wildlife sanctuary for birdlife and river has a large stock of trout.
- Proposal would be injurious to the visual amenities of the area.
- Site is prone to flooding.
- Potential for pollution associated with the wwts.

4.0 Planning History

PA Ref 071690 – permission granted for dwelling house, septic tank, access road and all associated site works.

PA Ref 072059 – permission granted for domestic garage to rear of proposed dwelling house and associated site works.

5.0 Policy Context

5.1. Louth County Development Plan 2015-2021

- 5.1.1. Chapter 2, Core Strategy and Settlement Strategy, of the current Louth County Development Plan refers to development in rural settlements/countryside in Section 2.7. It states that the County contains significant rural areas and it is recognised that there is a need to protect and support rural settlements and the countryside by accommodating limited growth in accordance with the needs of genuine rural dwellers whilst providing careful management of physical and environmental resources.
- 5.1.2. All of County Louth falls within 'rural areas under strong urban influence' as defined by the National Spatial Strategy (NSS) 2002 by reason of its proximity to Dublin and its strong urban structure. To facilitate the careful management of rural one-off housing 'Local Needs Qualifying Criteria' are set out in Section 2.19.1 of this Plan.
- 5.1.3. The appeal site lies in Development Zone 2 (see attachments), the objective of which is 'To protect the scenic quality of the landscape and facilitate development required to sustain the existing rural community'.
- 5.1.4. Policy RD 33 in particular applies to development within the zone and seeks - *To permit only essential resource and infrastructure based developments and developments necessary to sustain the existing local rural community. Such development would include limited one-off housing.... *Refer to Section 2.19.1 for Qualifying Criteria.*
- 5.1.5. Section 2.19.1 – Qualifying Criteria 2 - i.e. *"That they have lived for a minimum period of 10 years in the local rural area (including cross-border), they have a rural*

housing need, they do not already own a house or have not owned a house within the rural area of the County for a minimum of 5 years prior to making an application”.

- 5.1.6. Policy for one-off rural housing is set out in section 2.19 of the Plan. The overriding aim of the planning authority’s approach to one-off houses in the countryside is guided by the governments Sustainable Development Housing Guidelines, 2005 where rural generating housing relates to those who have spent a substantial period of their lives living in rural areas as members of the established rural community and which seeks to accommodate, within rural areas, people who are functionally or socially part of the rural community.
- 5.1.7. Section 2.19.2 of the Development Plan set out a definition for a “local rural area”.
- 5.1.8. Policy SS 18 seeks to ‘permit rural generated housing in order to support and sustain existing rural communities and to restrict urban generated housing in order to protect the visual amenities and resources of the countryside, subject to the local needs qualifying criteria as set out in Section 2.19.1 below’.
- 5.1.9. Policy SS 19 requires ‘that applicants for one-off rural housing demonstrate compliance with the Local Needs Qualifying Criteria relevant to the respective Development Zone as set out in Section 2.19.1 above’.
- 5.1.10. The appeal site is designated within an Area of High Scenic Quality. Section 5.15.2 of the Development Plan relates to Areas of High Scenic Quality. Policy HER 61 seeks *“To protect the unspoiled rural landscapes of the AHSQ for the benefit and enjoyment of current and future generations”.*
- 5.1.11. Policy SS25- To require that applications for one-off houses demonstrate compliance with the Development Management Assessment Criteria for One-Off Rural Housing as detailed in Section 2.19.7.
- 5.1.12. Section 2.19.7 sets out development management criteria for one-off rural housing applications. Relevant criteria include the following:
- The cumulative visual impact and pattern of development of existing houses and permissions granted in the vicinity of the site,
 - The cumulative visual impact, pattern of development and number of houses developed and granted permission on the landholding,

- Breaking the skyline and visual impact,

5.1.13. Policy SS26 – To require that the design and siting of the proposed dwelling is such that it does not detract from the rural character or the visual amenities of the area. In this regard, applicants will be required to demonstrate that the proposal is consistent with the document Building Sensitively and Sustainably in County Louth and the guidelines contained in Section 2.20.

5.1.14. Policy SS66- To require that applications for one-off dwellings in rural areas demonstrate compliance with the requirements outlined in 2.20 to 2.20.8 of this Plan.

5.1.15. Section 2.20 Rural Housing Design and Siting Criteria.

5.2. Sustainable Rural Housing Development Guidelines 2005

5.2.1. The guidelines require a distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which ‘Rural Generated Housing Need’ might apply. These include ‘persons who are an intrinsic part of the rural community’ and ‘persons working full time or part time in rural areas’.

5.2.2. County Louth is located within an area designated as being ‘Rural Areas under Strong Urban Influence’ within these Guidelines.

5.2.3. Section 3.3.3 deals with ‘Siting and Design’.

5.3. National Planning Framework

5.3.1. Policy 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’.

5.4. Natural Heritage Designations

The appeal site lies c.140m from of Dundalk Bay, a proposed Natural Heritage Area and designated Special Area of Conservation (joint site code 000455) and a Special Protection Area (site code 004026).

5.5. EIA Screening

Having regard to the nature of the proposed development comprising a single dwelling house and associated 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 third party appeal was submitted by David Mc Mahon and Karl Flynn in respect of the proposal. The following provides a summary of the grounds of appeal.

- The appeal questions the applicant’s compliance with local need requirements and states that the applicant is not from the Bellurgan Area.
- Concerns are raised in relation to flood risk associated within the siting of the property on a floodplain of the Bellurgan River.
- The site is located within the Dundalk Bay Special Area of Conservation. Protected species have been observed in the area including migrating ducks, corncrakes and otters.
- It is stated that percolation and septic tanks may impact on the quality of Bellurgan River and its species including trout.

- The appeal site is located within an Area of Outstanding Natural Beauty (AONB). The design of the proposal is “an eye sore” which not in keeping with the surrounding landscape and will result in loss of views.
- Concerns relating to proposed creation of new vehicular entrance from entrance laneway which serves an existing factory which has a heavy flow of industrial traffic.
- Reference is made to the planning history on the site wherein an unauthorised caravan was erected.
- Concerns relating to the use of the site for storage of shipping containers.
- Health and safety concerns relating to the existing ESB power lines on site.

6.2. Applicant Response

6.2.1. A response to the third-party appeal was received by EHP Services on behalf of the applicant. The following provides a summary of the points raised.

- The proposed development is entirely consistent with all planning policies and zoning objectives relevant to the appeal site.
- In terms of compliance with local need criteria, the applicant has strong and continuous family ties to the area and complies with the local need criteria for Development Zone 2.
- The issue of flood risk is addressed within the Flood Risk Assessment submitted in response to Louth County Council’s request for further information.
- The appeal site is not located within any designated Natura 2000 site. Nearest designated sites include the Dundalk Bay SAC, SPA and NHA which is located 140m to the south of the appeal site. The appeal site is separated from Dundalk Bay by the Carlingford Road, the Christoff Factory and adjoining vacant lands.
- An NIS is submitted in response to Louth County Council’s request for further information. This outlines that there is no evidence or recorded sightings of protected species on the appeal site.

- The site is located within an Area of High Scenic Quality and not an Area of Outstanding Natural Beauty as detailed within the appeal. The site is not located along a designated scenic route and would not interfere with any designated views or prospects as identified within the Louth County Development Plan 2015-2021. The proposed dwelling is entirely in keeping with the existing pattern of development in the surrounding area.
- The height, massing, design and appearance of the dwelling has been designed in accordance with the guidance set out within the Design Guidelines for Single Houses in the Countryside: Building Sensitively and Sustainably in County Louth. No concerns relating to the visual impact of the proposal were raised within the planning authority's decision to grant permission for the proposal.
- Traffic impact associated with the proposed dwelling would be negligible.
- The application submitted for retention of a mobile home under PA Ref. 18/137 did not relate to the appeal site. The mobile home was removed on foot of enforcement proceedings. The applicant has no intention of use of site for storage of shipping containers, the installation of such structures would require separate planning permission.
- The proposed residential unit is not located in proximity to the existing ESB lines which traverse the southern portion of the site.

6.3. Planning Authority Response

6.3.1. Louth County Council have provided the following response to the grounds of appeal:

- As the applicant's home is within the coastal zone, the development plan allows for the area of housing qualification to be extended to take account of the area lost to the sea. Applicant qualifies with this exemption and section 2.19 of the County Development Plan.
- The submitted flood risk assessment demonstrates that the proposed dwelling will not exacerbate flooding in the area. The assessment was reviewed by the

infrastructure section of Louth County Council and no objection to the proposed dwelling was raised.

- Having regard to the contents of the Natura Impact Statement it was determined that the development would not impact on the conservation objectives of designated European sites.
- Requests An Bord Pleanála to uphold the decision of the planning authority and grant permission for the development.

6.4. Observations

- None

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Compliance with Rural Housing Policy
- Design and Visual Impact
- Access
- Flood Risk
- Water and Waste Water
- Other Issues
- Appropriate Assessment

7.2. Compliance with Rural Housing Policy

- 7.2.1. A case is made within the third party appeal that the applicant is not from the Bellurgan Area and in this regard the appellant questions the applicant's compliance with local need requirements as set out within the County Development Plan.
- 7.2.2. The appeal site is located within a rural area outside of any settlement centre as identified within the Louth County Development Plan. All of the rural areas of the

County Louth fall within 'rural areas under strong urban influence' by reason of its proximity to Dublin. In such areas national planning policy on rural housing seeks to direct urban generated housing needs into towns and villages and to facilitate the provision of single houses in the countryside based on demonstrated economic or social need to live there (and siting and design criteria).

7.2.3. The appeal site lies in Development Control Zone 2 of the current Louth County Development Plan. One-off rural houses are permitted within the zone subject to compliance with the stated Local Needs Qualifying Criteria. Under section 2.19.1 (2) this includes that an applicant:

- has lived for a minimum period of 10 years in the local rural area,
- have a rural generated housing need, and
- does not already own a house or has not owned a house within the rural area of the county for a minimum of 5 years prior to making the application.

7.2.4. The qualifying family home is located within 9.8km of the appeal site, within development zone 3 of the coastline. As the applicant's home is within the coastal zone, the development plan allows for the area of housing qualification to be extended to take account of the area lost to the sea. The applicant's current address is identified as Faughart, Dundalk, Co Louth.

7.2.5. The following documentation was submitted in conjunction with the application to demonstrate compliance with Local Need:

- Completed Section B of the planning application form which outlines that the applicant lived in the local rural area of Mullatee, Carlingford, Co. Louth.
- Letter from Parish Priest, Utility Bill, Letter from Bush School, Birth Certificate.

7.2.6. In responding to the grounds of appeal the applicant has made a case that the applicant has strong and continuous family ties to the area and complies with the local need criteria for Development Zone 2.

7.2.7. While the applicant has demonstrated that they have lived in the local rural area for a period of 10 plus years and have family links to the area, I see no evidence in the application which demonstrates of the applicant's "rural generated housing need" in accordance with the requirements of Section 2.19.1 (2) of the Development Plan.

- 7.2.8. I note the requirements of Policy SS 18 in this regard which seeks to *'permit rural generated housing in order to support and sustain existing rural communities and to restrict urban generated housing in order to protect the visual amenities and resources of the countryside, subject to the local needs qualifying criteria as set out in Section 2.19.1 below'*. On the basis of the information on file I note that the applicants existing address is within the development boundary of Dundalk.
- 7.2.9. The NPF clearly sets out a requirement that in areas under strong urban influence, single houses should be restricted to those with a demonstrable economic or social need to live in the local area. On review of the application documentation, I note that no evidence has been provided to demonstrate either a social or economic need to live within the area.
- 7.2.10. In the absence of the identification of a rural housing need, I consider that the proposed development is inconsistent with the national policy framework for rural housing and recommend that permission is refused on this basis.

7.3. Design and Visual Impact

- 7.3.1. Concerns relating to the visual impact of the proposal are raised within the 3rd party appeal. A case is made that the design of the proposal is not in keeping with the surrounding landscape and will result in a loss of views. The appellant refers to the location of the site within an Area of Outstanding Natural Beauty in this regard.
- 7.3.2. At the outset, I note that the appeal site is located within an Area of High Scenic Quality within the Louth Development Plan and not an Area of Outstanding Natural Beauty as alleged within the 3rd the third party appeal. The guidance for development within this area is *"to protect the unspoiled rural landscapes of the AHSQ for the benefit and enjoyment of current and future generations"*.
- 7.3.3. Landscape Character Areas for County Louth are identified within Map 5.5 of the County Development Plan. The site is located within the Lower Faughart Castletown and Flurry River Basin area which is designated as being an area of local importance. The site is furthermore not located along a scenic route or within the path of any designated protected views or prospects as identified within Map 11.1 of the Louth County Development Plan.

- 7.3.4. The applicant has made a case that the appeal site is not located within a visually sensitive location. The appeal site is set back from the Carlingford Road the existing pattern of development within the vicinity of the appeal site includes existing residential properties to the north and west and a commercial premises to the south which fronts onto the R173 Carlingford Road.
- 7.3.5. Notwithstanding the case made by the applicant, I consider that in the absence of any identified locally-based need for the house, the proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment.

7.4. Access and Transportation

- 7.4.1. Access to the appeal site is proposed via the existing private access laneway which forms the western boundary of the site and serves the existing dwelling to the north of the site. This laneway connects to a slip road off the R173 Carlingford Road which serves the existing commercial premises Christoff kitchens to the south of the site and existing residential properties which front onto the slip road.
- 7.4.2. Access to the dwelling is proposed via a c.5m wide entrance from the private laneway which runs adjacent to the western site boundary as illustrated on the Proposed Site Layout Plan (Drawing no. 19-1500-005 Rev 2). The existing private laneway runs in a straight alignment along the site boundary and I envisage no impediments to visibility from the proposed site entrance.
- 7.4.3. The third party appeal raises concern in relation to the proposed access arrangements in light of potential conflicts associated with traffic movements with the existing commercial premises to the south of the site. In considering the grounds of appeal I note that the private laneway currently serves the existing dwelling to the north of the site. The principle of access from the shared access road to the private laneway is therefore established.
- 7.4.4. The existing commercial premises “Christoff Kitchens” is served by a car park to the south of the building and a separate entrance to the west which accommodates delivery vehicles. In this regard I do not envisage conflicts between traffic movements associated with the existing and proposed residential dwellings and the commercial premises. The proposed dwelling would generate a negligible increase in traffic on the local road network.

7.4.5. No objection to the proposed access arrangements is raised within the report on the application from the Infrastructural Division of Louth County Council and I similarly have no objection in principle to the proposed access arrangements.

7.5. Flood Risk

7.5.1. Concerns relating to flood risk associated with the siting of the proposed dwelling within the floodplain of the Bellurgan River are raised within the 3rd party appeal on the application. The appeal includes photographic evidence of flooding which is alleged to be of the appeal site.

7.5.2. At the outset, I note that the applicant's response to the grounds of appeal details that the photograph submitted in conjunction with the third party appeal which illustrates evidence of flooding relates to lands immediately to the south of the appeal site and is associated with pluvial flooding which occasionally occurs on adjoining lands and is temporary in duration.

7.5.3. The issue of flood risk was raised within Item 1 Louth County Council's request for further information and the applicant was requested to submit a Flood Risk Assessment which specifically addresses fluvial flood risk for the site.

7.5.4. A flood risk assessment prepared by Eamonn McMahon was submitted in response to the FI request. Section 2 of the Flood Risk Assessment outlines that the site is possibly susceptible to Coastal Flooding having regard to its location within 150m of Dundalk Bay. The location of the site to the west of an existing watercourse also renders the site potentially susceptible to Fluvial and Pluvial flooding.

7.5.5. A range of sources are identified within the FRA to inform the study including the PFRA Maps prepared by the OPW in 2011 and OPW floodmaps.

7.5.6. The Flood Risk Assessment outlines that the pluvial flooding is not identified in any data source. The OPW flood maps and AFA maps illustrate that coastal flooding shall not extend beyond the R173 even under a high end future scenario. On this basis, flood risk associated with coastal and pluvial flooding is dismissed.

7.5.7. Specific concerns relating to fluvial flood risk are raised within the grounds of appeal and Louth County Council's request for further information. In this regard the flood risk assessment details that while the 2016/2017 OPW flood maps illustrate that the site is not susceptible to fluvial flood risk, this may be due to the fact that no analysis

has been carried out on the adjoining watercourse given its limited size. I agree with the conclusions of the flood risk assessment in this regard and consider potential for fluvial flooding having regard to the site topography. The 2011 OPW PFRA maps illustrate fluvial flood risk on site.

- 7.5.8. A case is made within the FRA that the extent of flooding illustrated within the OPW PFRA maps is overstated and having to the topographical study flood risk would be concentrated within the south eastern corner of the site. The FRA states that the south eastern corner of the site may be susceptible to fluvial flooding with an estimated total water level (TWL) of 3.70m. The FRA outlines that the south eastern corner of application site potentially vulnerable to 1 in 100 year fluvial flooding.
- 7.5.9. The Proposed Site Layout Plan outlines that site levels vary from 3.6m to the south east of the site to 4.2m to the north. The proposed buildings are situated outside of the identified flood area and the proposed FL of 4.51m provides a freeboard in excess of 0.6m recommended in the GDSDS. The FRA furthermore outlines that access to the site to/from the R173 will remain in place even under flood conditions.
- 7.5.10. A number of revisions to the site layout were incorporated in response to the planning authority's request for further information in order to mitigate against possible negative impacts of flooding. Such measures include relocation of the wastewater treatment system to the western portion of the site, relocation of the soakage trench and retention of levels to the south east of the site as a landscaped area.
- 7.5.11. The FRA concludes that the adoption of these mitigation measures shall ensure that any flooding of the site shall not represent an unacceptable risk to persons, property or the environment and not exacerbate or cause flooding of 3rd party lands. No objection to the proposal on flood risk grounds were raised by the Infrastructure Section of Louth County Council.
- 7.5.12. Notwithstanding the above, I note that Figure 3.2 of the FRA illustrates evidence of flooding/wetlands on lands to the east of the appeal site in an area where site levels are identified in the range of 3.8m/3.9m on the Site Layout Plan. I would question the assumption in the FRA that the extent of the flood zone as illustrated in the PFRA maps is overstated or that the TWL of the site is at 3.7m. I furthermore note evidence of flooding within the northern portion of the site on aerial photography.

7.5.13. On the basis of the above, I do not consider that sufficient evidence has been presented within the FRA to identify the site specific extent of fluvial flood risk on site to demonstrate that the proposal would not represent an unacceptable risk to persons, property or the environment and not exacerbate or cause flooding of 3rd party lands. I recommend that planning permission is refused on this basis.

7.6. Water and Waste Water Treatment System

- 7.6.1. The proposed development is to be served by a new wastewater treatment system and percolation area to the south of the site. Water supply is proposed via a new connection to the existing watermain which runs along the access road to the west of the site. Concerns relating to the location of the proposed waste water treatment system are raised within the 3rd party appeal.
- 7.6.2. A Soil Characteristics and Site Suitability Assessment Report prepared by Colm Holmes was submitted in conjunction with the application. The form is dated October 2007 and the testing dates to 2007.
- 7.6.3. The site is identified on relatively flat ground. The soil type is categorised as Sandy Gravely Type Soil. Ground conditions were firm on-site inspection and no surface water ponding was evident.
- 7.6.4. The interface between flood risk and the proposed Waste Water Treatment System is also an important consideration in assessing the proposal. The proposed development is to be served by a new wastewater treatment system and percolation area.
- 7.6.5. The submitted Site Characterisation Form states that a trial hole, with a depth of 2.1m recorded sandy gravely type soil and the water table was encountered at 1.35m. Groundwater flow is identified in a southern direction.
- 7.6.6. A likely T value of 1.25 min/25mm is identified indicating a fast percolation rate. The Characteristics form outlines that due to the presence of water in the trial hole and type of sub soil and fast percolation rate it is proposed to install a "Puraflow" Treatment Plant. Louth County Council's request for further information outlines that a tertiary treatment system should be installed having regard to ground conditions. The applicant's response to the grounds of appeal details that the percolation area would be erected as a raised mound above the protected flooding level.

- 7.6.7. The report on file from the Environmental Compliance Section outlines that the applicant has submitted adequate information to demonstrate there will be no threat of environmental pollution from the proposed development. A grant of permission is recommended subject to condition. Condition no. 8 of Louth County Council's notification of decision to grant permission includes a recommendation that the replacement sub soil being proposed to the tertiary treatment system will be tested and placed insitu as per the EPA Code of Practice.
- 7.6.8. I note that the proposed mitigation measures on the site include the siting of the proposed WWTS outside of the area identified at risk of flooding. However, as detailed earlier in this report, I do not consider that sufficient evidence has been provided within the FRA to demonstrate the full extent of flooding on site. In this regard I refer to the footnote on the report from the Environment Compliance Section outlines that *"in the even the site is subject to probability of flooding of 1:200 year, or more frequent probability of flooding, the Environmental Compliance Section objects to the proposed development on public health grounds"*. On this basis concerns relating to public health associated with the proposal have not been sufficiently addressed.
- 7.6.9. On the basis of the information submitted in relation to foul and surface water drainage and flood risk, I am not satisfied that the proposed development would not be prejudicial to public health or pose an unacceptable risk of environmental pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.7. Other Issues

Impact on Ecology

- 7.7.1. Concerns are raised within the 3rd party appeal regarding the impact of the proposal on the protected species which have been observed in the area including migrating ducks, corncrakes, bats and otters. Reference is furthermore made to the presence of trout within the stream which runs to the east of the site.
- 7.7.2. The Natura Impact Assessment submitted in conjunction with the application outlines that the appeal site is a potential nesting/denning and foraging habitats for Shelduck, otters and potential for bats on site.

7.7.3. The applicant's response to the grounds of appeal details that the site is not conducive to attracting corncrake nor in providing a suitable habitat. It is stated that the last recorded sighting of corncrake within Louth was in 2009 in the Dunany Point area. Reference is furthermore made to the precautionary mitigation measures set out within the submitted Natura Impact Statement to negate against impact on protected species.

7.7.4. No evidence of a survey of the ecology of the appeal site is presented within the application documentation. The NIS details precautionary mitigation measures to negate against impact on protected species but on an overall basis I consider that the information presented in relation to the baseline ecology of the site is insufficient. I consider that further clarity in relation to the ecology of the site would be required but in this instance having regard to other substantive reasons for refusal I do not consider it necessary to include a reason for refusal.

7.8. Appropriate Assessment

7.8.1. The appeal site is located within 140m of Dundalk Bay a designated Special Area of Conservation (Site Code 000455) and Special Protection Area (Site Code 004026). The existing stream which runs to the east of the site connects to Dundalk Bay.

7.8.2. Concerns are raised within the 3rd party appeal regarding the impact of the proposal on protected species including Shelduck which are listed as a qualifying interest of the SPA.

7.8.3. An AA Screening and Natura Impact Assessment prepared by EHP Services was submitted in response to Louth County Council's request for further information. The assessment concludes that:

"The south east corner of the application site is potentially vulnerable to 1 in 100 year fluvial flooding. The stream running parallel with the application site's eastern boundary is not part of the Natura 2000 site network nor have Shelduck, Otters or Bats been specifically recorded in this locality. However, it is a prime habitat type and unlikely not to be used for foraging, nesting or denning by one or all of these protected species. The precautionary principle at the core of Appropriate Assessment therefore dictates that assessment progress to Stage 2 to identify impacts, assess significance and consider potential mitigation measures".

- 7.8.4. The project is not directly connected with or necessary to the management of a European Site and, therefore, it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.8.5. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development and site

- 7.8.6. Section 2.2 of the NIS provides an overview of the project. In summary, the development comprises construction of a 2 storey dwelling, garage, wastewater treatment system and all associated site development works. Surface water will be drained to a soakaway located in the north eastern corner of the site.
- 7.8.7. The appeal site is described as a part of a larger agricultural field between a dwelling to the north and commercial building to the south. Site boundaries include a deep ditch stream to include a which runs parallel to the site's eastern boundary. The study area surrounding the site is described as predominately rural in nature interspersed with on-off rural dwellings along the R173 Carlingford Road.

European Sites

- 7.8.8. Table 1 of the NIS identifies the following designated Natura 2000 sites within a 15km radius of the appeal site.

Special Protection Areas:

- Carlingford Lough – (Site Code 004078) – 9km
- Carlingford Lough – (Site Code UK9020161)
- Dundalk Bay – (Site Code 004026) -140m
- Strabannan-Braganstown – (Site Code 004091) – 16.3km

Special Areas of Conservation:

- Carlingford Shore (Site Code 002306) – 9km
- Carlingford Mountains (Site Code 000453) – 1.7km
- Derryleckagh (Site Code UK00166200)

- Dundalk Bay (Site Code 000455) -140m
- Rostrevor Wood (Site Code UK0030268)

- 7.8.9. The NIS outlines that having regard to distance, topographical considerations, and the nature of intervening landuses between the appeal site and designated conservation sites including Carlingford Lough SAC and SPA, Strabannan-Braganstown SPA, Carlingford Mountains SPA, Carlingford Shore SPA, Derryleckagh SAC and Rostrevor Wood SAC would not be prone or probable to direct or indirect impacts arising from the proposed development.
- 7.8.10. Having regard to the characteristics of the development, the location of the appeal site, the absence of a pathway to and the separation distance to the aforementioned sites, I am satisfied that these sites can be screened out of any further assessment.
- 7.8.11. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in-combination with other plans or projects could have a significant effect on European Site No. 000455 or 004026, in view of the site's Conservation Objectives, and Appropriate Assessment and submission of a NIS is, therefore, required.

Natura Impact Statement

- 7.8.12. The application included a NIS which examines and assesses the potential adverse effects of the proposed development on Dundalk Bay SAC and Dundalk Bay SPA. It provides an assessment of the potential impacts to the designated sites and an evaluation of the mitigation measures proposed.
- 7.8.13. The NIS identifies a hydrological link to the Dundalk Bay SAC and SPA via the existing stream which runs to the east of the site. The following provides a summary of the qualifying interests and special conservation interests for these sites.

European Site Site Code	List of Qualifying interest /Special conservation Interest	Distance from proposed development (Km)	Connections (source, pathway receptor)	Considered further in screening Y/N
Dundalk Bay SAC 000455	Estuaries Mudflats and sandflats not covered by seawater at low tide Perennial vegetation of stony banks Salicornia and other annuals colonising mud and sand Atlantic salt meadows Mediterranean salt meadows	140m	Existing stream to the east of the site	Yes
Dundalk Bay SPA 004026	Great Crested Grebe Podiceps Greylag Goose Light-bellied Brent Goose Shelduck Teal	140m	Existing stream to the east of the site	Yes

	Mallard			
	Pintail			
	Common Scoter			
	Red-breasted			
	Merganser			
	Oystercatcher			
	Ringed Plover			
	Golden Plover			
	Grey Plover			
	Lapwing			
	Knot			
	Dunlin			
	Black-tailed Godwit			
	Bar-tailed Godwit			
	Curlew			
	Redshank			
	Black-headed Gull			
	Common Gull			
	Herring Gull			
	Wetlands & Waterbirds			

7.8.64. The Conservation Objective for Dundalk Bay SAC seeks to maintain the favourable conservation status of habitats and species.

- To maintain the favourable conservation condition of Estuaries;
- To maintain the favourable conservation condition of Mudflats and sandflats not covered by seawater at low tide;

- To maintain the favourable conservation condition of Perennial vegetation of stony banks;
- To restore the favourable conservation condition of Salicornia and other annuals colonizing mud and sand;
- To restore the favourable conservation condition of Salicornia and other annuals colonizing mud and sand;
- To maintain the favourable conservation condition of Atlantic salt meadows.

7.8.65. The Conservation Objective associated with the Dundalk Bay SPA seeks to maintain or restore the favourable conservation status of habitats and species.

Dundalk Bay SAC (000455) and Dundalk Bay SPA (004026)

7.8.66. The proposed development would not be located within the SAC or SPA and there would be no direct effects as a result. The appeal site is physically separated from designated sites by existing commercial premises to the south of the site and the R173 Carlingford Road.

7.8.67. The Dundalk Bay SAC and the Dundalk Bay SPA overlap. The site is located approx. 140m north of both the SAC and the SPA. The site is bound to the east by a stream, which drains to Dundalk Bay. Therefore, there is a potential hydrological pathway to the SAC and SPA.

7.8.68. Dundalk Bay is a very large open, shallow sea bay with extensive saltmarshes and intertidal sand / mudflats, extending some 16 km from Castletown River on the Cooley Peninsula in the north, to Annagassan / Salterstown in the south. The bay encompasses the mouths and estuaries of the Rivers Dee, Glyde, Fane, Castletown and Flurry.

Identification of likely effects

7.8.69. The applicants NIS considered that the potential indirect impacts from the proposed development to the designated SAC and SPA related to the following:

- South eastern corner of application site potentially vulnerable to 1 in 100 year fluvial flooding.
- Stream adjoining eastern boundary of appeal site is a direct pathway to Dundalk Bay SPA and SAC and potential nesting/denning and foraging

habitats for protected species including Shelduck which are a qualifying interest of the SPA.

- Construction and operational phase of the proposed development may be vulnerable to direct or indirect impact(s) due to disturbance and/or disruption arising from discharged surface water and/or treated foul water, noise, light, habitat alteration/damage and human interaction.

7.8.70. The NIS outlines that in the absence of mitigation measures, it is not possible to rule out impacts which could negatively impact on qualifying interests of the SAC and SPA.

In-Combination/Cumulative Impacts

7.8.71. The NIS identifies that there are no plans or projects within the vicinity of the site which would give rise to cumulative impacts on any designated Natura 2000 site. On review of the planning history in the vicinity I have no objection to the conclusions of the study in this regard.

Mitigation Measures

7.8.72. Section 4.6 of the NIS sets out the following Mitigation Measures:

- Protected Species- In order to avoid undue disturbance and negative impact to the breeding cycle and nesting patterns of Shelducks it is recommended that no site preparation or construction works are carried out between mid April to July of any particular year. No construction activities occur after dark and no floodlighting is used.

In order to provide a greater physical and acoustic buffer separating the site and adjoining stream it is recommended that the site layout is amended to include additional planting of hedgerow, trees and flowering plants along the application sites eastern boundary to a minimum depth of 2.5m.

Noise: In order to minimise the duration and frequency of potentially high impact noise events, these should be carried out concurrently. Heavy plant machinery should be carefully selected with noise abatement mufflers, baffles, dampeners or sound aprons.

- Hazardous Materials – toilets and potentially hazardous materials should be located along the site's western boundary. Any spillages should be reported to the site manager.
- Litter Control - litter management plan shall be implemented on site to prevent litter contamination of the riparian corridor.
- Sediment Control – to minimise potential wind or waterborne erosion all stockpiled materials shall be covered along the site's western boundary.
- Water Quality and Hazardous Materials – proposed WWTS and percolation shall be relocated as far away from the eastern boundary of the stream as possible.
- Landscaping and Invasive Species – period between removal of on-site vegetation and ground levelling shall be as short as possible.
- Protected Measures and Retained Vegetation – existing hedgerows and trees defining the application sites eastern boundary shall be delineated with a protective fence or similar measure.
- Lighting Impacts: no construction works should be carried out during dying light or night-time hours which would necessitate the use of external floodlighting.

7.8.73. The NIS outlines that the above mitigation measure will effectively offset any potential impact upon the adjoining stream's aquatic habitats and indigenous species and by association the qualifying interests of the downstream conservation areas within Dundalk Bay.

7.8.74. The NIS concludes that *"The mitigation measures set out above reflect best practice in construction and development. Such measures will be effective in minimising as much as is possible any potential residual environmental impacts.*

It is therefore concluded that the proposed development in conjunction with these measures will not present any direct or indirect detrimental impact, either along or in combination with any other plan or project, upon the integrity or qualifying interests of the protected species or habitats within the Natura 2000 site network or the Conservation Objectives of Dundalk Bay's SPA or SAC.

- 7.8.75. Notwithstanding the above conclusions of the NIS, I have concerns in relation to the scope and content of the study. The onus is on the applicant to ensure that adequate and relevant information is submitted to enable an Appropriate Assessment to be carried out. Such an assessment should be based on the best scientific knowledge in the field, of all aspects of the development project which can, by itself or in combination with other plans and projects, adversely affect the European site in light of its Conservation Objectives.
- 7.8.76. In particular I consider there are information deficiencies in relation to baseline bird surveys, flood risk, interface between flood risk and the proposed waste-water treatment system and the proposal for importation of soil for the proposed WWTS. Water quality within Dundalk Bay is a fundamental component of the areas conservation importance. Having regard to the outstanding issues around flood risk, in particular, I have concerns about potential associated downstream effects that have not been considered in the NIS.

Conclusion

- 7.8.77. On the basis of the information provided with the application and appeal, including the Natura Impact Statement, and in light of the assessment carried out above, I am not satisfied that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European site(s) No. 000455 and 004026, in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.'

8.0 Recommendation

- 8.1. I recommend that planning permission for the proposed development be refused in accordance with the following reasons and considerations.

9.0 Reasons and Considerations

1. Having regard to the location of the site within an 'Area Under Strong Urban Influence' as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005, and in an area where housing is restricted to

persons demonstrating local need in accordance with the current Louth County Development Plan 2015-2021, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or Section 2.19.1 of the Development Plan for a house at this location. In addition, having regard to National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements, it is considered that the applicant has not demonstrated an economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements and, therefore, the proposed development does not comply with National Policy Objective 19.

Accordingly, in the absence of any identified locally-based need for the house, the proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed 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 provided within the Flood Risk Assessment that sufficient evidence has been presented to identify the site specific extent of fluvial flood risk on site to demonstrate that the proposal would not represent an unacceptable risk to persons, property or the environment and not exacerbate or cause flooding of 3rd party lands. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.
3. 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 proposed development would not be prejudicial to public health or pose an unacceptable risk of environmental pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

4. The Board is not satisfied, on the basis of the information provided with the application, including the Natura Impact Statement, that the proposed development individually, or in combination with other plans or projects would not adversely affect the integrity of European sites Nos. 000455 and 004026, in view of the sites' Conservation Objectives. In such circumstances the Board is precluded from granting approval/permission.

Stephanie Farrington
Senior Planning Inspector
12th of February 2021