



An  
Bord  
Pleanála

## Inspector's Report

### ABP-309456-21

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<b>Development</b>	Construction of 1 no. 2 storey dwelling & single storey garage
<b>Location</b>	Lands at Balheary Road, Dollards, Swords, Co. Dublin
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F20A/0584
<b>Applicant(s)</b>	Cahal Flynn
<b>Type of Application</b>	Full Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Cahal Flynn
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> of May 2021
<b>Inspector</b>	Karen Hamilton

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## 1.0 Site Location and Description

- 1.1. The subject site (0.35ha) is in a rural area c. 2km to the north of the settlement of Swords, Co. Dublin. The M1 motorway is located c. 3km to the east.
- 1.2. The site comprises of an agricultural field, currently planted with crops. The site fronts onto Balheary Road and is separated by a large roadside ditch. A large rural dwelling is located to the south of the site and there are a number of dwellings scattered along the roads in the vicinity of the site.

## 2.0 Proposed Development

- 2.1. The proposed development would comprise of the following:
  - Construction of a one-off dwelling (c. 287m<sup>2</sup>), garage (c.62.4m<sup>2</sup>) wastewater treatment system and associated site development works.

## 3.0 Planning Authority Decision

### 3.1. Decision

Refuse permission for the following reason:

1. The subject site is within the greenbelt zoning objective under the Fingal Development Plan 2017-2023, the objective of which is “to protect and provide for a Greenbelt”. Table RF01 and Objective RF31 of the Fingal Development Plan 2017-2023 indicate that the maximum number of houses which will be permitted within the zoning objective is one dwelling (+1 for exceptional health reasons). A dwelling for a family member has recently been permitted on greenbelt land under F17A/0147. The proposed development is therefore contrary to Objective RF31 of the Fingal Development Plan 2017-2023.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Reports

The report of the area planner notes the planning policy from the development plan and the planning history on the site. A summary of the relevant considerations is detailed below:

#### Zoning & Compliance with Rural Settlement Strategy

- The applicant has applied for the dwelling based on full-time employment in the family farm.
- A number of documentations demonstrating compliance with Objective RF38 has been submitted.
- It is noted that confirmation of involvement in the Quality Assurance Scheme managed by An Bord Bia for the previous 3 years has not been submitted.
- Table RF01 and Objective RF31 permit one dwelling per family member on lands with the Green belt. The applicant's brother has been granted permission (F17A/0147) and a further dwelling can not be permitted.

#### Overcoming Previous Refusal Reasons

- Planning permission was refused recently for the applicant (F19A/0424) with reference to Objective RF31 (one dwelling per family member).
- Table RF01 only permits one dwelling per family dwelling on greenbelt lands, therefore another dwelling cannot be permitted.

#### Visual Impact and Impact on the Amenity of the Greenbelt Area.

- A breakdown of the location and design of the dwelling is provided. The design is urban in nature and not traditional in nature.
- Objective RF60 requires the submission of a Visual Impact Statement (VIS). The VIS notes the character area as "Rolling Hills and Tree Belts" character area.
- Whilst the design of the dwelling did not form any reason for refusal previously, there are reservations over the design.
- Should a grant of permission be considered the design should be amended by additional information.

#### Vehicular Access and car parking

- The Transport Section have no objection to the proposal.

#### Hedgerow, Trees and Landscaping

- Tree and hedge planting is appropriate and should be completed no later than the first planting season.

#### Flood Risk, Services and Drainage

- An open ditch runs along the front of the site.
- The water services state that given the proximity to the existing stream to the south west and flood risk assessment in line with national guidance should be submitted.

#### Conclusion

- It was concluded that permission should be refused having regard to Table RF01 and Objective RF31 of the development plan, which restricts one dwelling per family member.

#### 3.2.2. Other Technical Reports

Water Services Department: Request for Additional Information for the submission of a flood risk assessment in line with the Planning System and Flood Risk Management -Guidelines for Planning Authorities.

The report of the area planner notes no objection to proposal from the transportation department although no hard copy of any report was submitted to the Board as part of this appeal nor was there any recorded report on the Fingal Planning Portal (online 16<sup>th</sup> of May 2021)

#### 3.3. **Prescribed Bodies**

Irish Water: No objection to proposal subject to a connection agreement.

#### 3.4. **Third Party Observations**

None submitted

## 4.0 Planning History

### **Reg Ref F19A/0424**

Permission refused on the site for Cahal Flynn for a one-off dwelling for the following reason:

1. The subject site is within the greenbelt zoning objective under the Fingal Development Plan 2017-2023, the objective of which is “to protect and provide for a Greenbelt”. Table RF01 and Objective RF31 of the Fingal Development Plan 2017-2023 indicate that the maximum number of houses which will be permitted within the zoning objective is one dwelling (+1 for exceptional health reasons). A dwelling for a family member has recently been permitted on greenbelt zoned land under F17A/0147. The proposed development is therefore contrary to Objective RF31 of the Fingal Development Plan 2017-2023.

### **Reg Ref F18A/0519**

Permission refused on the site for Cahal Flynn for a one-off dwelling for the following reason:

1. The subject site is within the “GB” zoning objective under the Fingal Development Plan, 2017-2023, the objective of which is “to protect and provide for a greenbelt” in the Fingal Development Plan 2017-2023. Table RFO1 and Objective RF34 of the Fingal Development Plan 2017-2023 indicate that the maximum number of houses per farm family which will be permitted within areas with the zoning objective “GB” where the applicant demonstrates their direct participation in the running the family farm is one (plus one for exceptional health reasons). A dwelling for a family member has recently been permitted on “GB” zoned lands in the vicinity of the subject site by reason of involvement in the family farm. The proposed development is therefore contrary to Objective 34 of the Fingal Development Plan 2017-2023.

### **Reg Ref F17A/0147**

Permission granted to Eric Flynn, a brother of the applicant, on lands in the vicinity. The applicant qualified for eligibility under Objective RF38, where one family member

is required to live close to the farm where they are actively engaged in farming the family land. An occupancy condition (C3) was included.

## 5.0 Policy Context

### 5.1. Project Ireland 2040, National Planning Framework (NPF)

NPO19 seeks to

‘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’

### 5.2. Section 28 Guidelines

#### 5.2.1. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

- A distinction to be made between ‘Urban Generated’ and ‘Rural Generated’ housing need.
- Section 3.2: A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those within proximity to the immediate environs or close commuting catchment of large cities and towns.
- Section 4.3: Accessing Housing Circumstances
- Appendix 3 sets out that in areas under strong urban influence, urban generated development should be directed to areas zoned for new housing development in cities, towns and villages in the area of the Development Plan.

#### 5.2.2. EPA Code of Practice for Domestic Wastewater Treatment Systems 2009 & 2021

5.2.3. Planning System and Flood Risk Management -Guidelines for Planning Authorities (Nov 2009).

### 5.3. Fingal County Development Plan 2017-2023

The site is located on lands designated as GB- Greenbelt, where it is an objective “To Protect and provide for a Greenbelt”.

#### Vision for Greenbelts

*Create a rural/urban Greenbelt zone that permanently demarcates the boundary i) between the rural and urban areas, or ii) between urban and urban areas. The role of the Greenbelt is to check unrestricted sprawl or urban areas, to prevent coalescence of settlements, to prevent countryside encroachment and to protect the setting of towns and/or villages. The Greenbelt is attractive and multifunctional, serve the needs of both the urban and rural communities, and strengthens links between urban and rural areas in a sustainable manner. The Greenbelt will provide opportunities or countryside access and for recreation, retain attractive landscapes, improve derelict land within and around towns, secure lands with a nature conservation interest, and retain land in agriculture use. The zoning objective will have the consequence of achieving the regeneration of undeveloped town areas by ensuring that urban development is directed towards these areas.*

#### Greenbelt Guidance

Strategic Policy: Strengthen and consolidate greenbelts around key settlements.

**Objective SS08:** Strengthen greenbelt lands by identifying opportunities for infill development and consolidation of existing towns to reduce the need to zone additional greenfield lands and ensure the preservation of strategic greenbelts between our towns and villages.

**Objective SS09:** Promote development within the Greenbelt which has a demonstrated need for such a location, and which protects the permanency of the Greenbelt, and the open and rural character of the area.

**Objective RF31:** Permit a maximum of one incremental house for those who meet the relevant criteria set out in this chapter within areas with the zoning objective HA or GB plus one house for a person with exceptional health circumstances.



**Objective RF34:** Permit up to two additional dwellings per farm family in areas with the zoning objective, RU, and one additional dwelling per farm family within areas with the zoning objective GB or HA, where the applicant demonstrates their direct participation in running the family farm and is considered to have a demonstrated need related to the working of the farm to reside on the family farm.

**Objective RF 38:** Demonstrate that the farm has been a working and actively managed farm in the ownership of the applicant's family for a minimum of three years preceding the date of the application for planning permission

The applicant will be required to demonstrate the following in relation to their working of the family farm:

- (i) The applicant is a member of a family which operates a farm within the rural area of Fingal, and is actively engaged in farming the family farm. Verifiable documentary evidence (such as dated and stamped Land Registry Documentation) showing details of the farm ownership, details of the family relationship with the farm owner, and the nature of the applicant's involvement in farming the family farm will be required.
- (ii) The farm on which the application for planning permission for a rural house has been submitted has been a working and actively-managed farm in the ownership of the applicant's family for a minimum of three years preceding the date of the application for planning permission.
- (iii) The location of the family home on the existing farm.
- (iv) The location of all other houses on the family farm which have been granted planning permission since the 19th October 1999. Submission details will include the date of grant of planning permission and the Council's file Register Reference under which any Planning Permissions were granted.
- (v) The family farm has been a working farm for the preceding three years. The criteria which are considered to constitute a working farm and the size thresholds for various types of farm are set out below. The minimum threshold area of a farm excludes the area of the farm occupied by the farmyard and farm buildings, the area of the existing family home and its curtilage, and the area of the site of the proposed dwelling.

(vi) Documentary evidence that the applicant resides on a working family farm within the planning application.

Documentary evidence (i.e. of a working farm) which is required is detailed below:

b) For horticulture farms:

- Confirmation of involvement in the Quality Assurance Scheme managed by An Bord Bia for the previous three years.
- Evidence of investment within the farm to demonstrate its current active engagement in the horticulture sector.
- Details of the supply of product from the farm which demonstrates that the applicant was supplying substantial produce to market in the preceding year.

Table RF01: Maximum number of houses which will be permitted per existing house

- GB- 1 (+1 for exceptional health reasons).

#### Housing in the Countryside

- Fingal is considered to be an area under “*Strong Urban Influence*” due to its proximity to Dublin and the Metropolitan area.

**Objective RF26:** Ensure the vitality and regeneration of rural communities by facilitating those with a genuine rural generated housing need to live within their rural community.

#### Design Criteria for Housing in the Countryside

**Objective PM50:** Ensure that new dwellings in the rural area are sensitively sited and designed to demonstrate consistency with the immediate Landscape Character Type and make best use of the natural landscape for a sustainable, carbon efficient and sensitive design.

**Objective RF60:** Ensure that any planning application for a house within an area which has a Greenbelt or High Amenity zoning objective is accompanied by a comprehensive Visual Impact Statement.

#### 5.4. **Natural Heritage Designations**

The site is located c.3.6km to the north west of the Malahide Estuary SAC (site code 000205), c. 4km to the north west of the Malahide Estuary SPA (site code 004025), c. 3.6km to the east of Rogerstown Estuary SAC (site code 000208) and c.4.3m to the east of Rogerstown Estuary SPA (site code 004015).

#### 5.5. **EIA Screening**

Having regard to the limited nature and scale of the proposed development and 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**

The grounds of appeal have been submitted by an agent, on behalf of the applicant Cahal Flynn, in relation to the refusal by the Planning Authority. In the most part, the applicant considers the PA has not provided a detailed assessment of the applicant's compliance with Objective RF34 and Objective RF38 and the applicant's need to live in the rural area. The grounds of appeal are summarised below:

##### Background

- The site is located beside the applicant's family home.
- The design of the dwelling is in compliance with the Rural Design Guide.

##### Planning History

- Cahal has been refused permission under Reg Ref F18A/0519 and F19A/0424.
- The planning authority's previous refusal did not consider the applicant's exceptional circumstances.

- The PA refusals have seriously jeopardised the economic and operational capacity of the Flynn's family farm.
- The applicant must reside on the site to ensure the family farm and business remain economically viable.
- The applicant and his family currently live in the applicant's family home beside the site.

#### Fingal County Development Plan 2017-2023

- The objective and vision for greenbelt lands are included.
- Members of families actively involved in the family farm are considered to be classified as rural-generated housing needs.
- The criteria for permitting one-off residential development under Table RF01 and Objective RF31 are outlined.
- It is contested that the rationale for assessment under these policies is incorrect.

#### Compliance with Objective RF38

- Cahal Flynn has applied for a rural dwelling under Objective RF38.
- A list of documentation accompanied the grounds of appeal (Appendix 2). In total 44 parts have been supplied.
- The information submitted is clear documentary evidence that Cahal Flynn has been actively engaged in the operation and running of the family business more than 3 years and can comply with Objective RF38.

#### Compliance with Objective RF34

- The PA did not provide any clarity as to whether Cahal meets the criteria under Objective RF34 as it accords with Objective RF38.
- It is acknowledged that the applicant's brother obtained permission for a dwelling and is in close proximity although the overall land holding is c.1,500 acres and more than 1 family member needs to manage the farm on a 24hr basis.

- There are no provisions in the development plan to allow a case for case basis.
- The applicant is actively engaged and manages the family farm.
- A map of the extent of the Flynn Family land in Dollard is submitted (c. 50 ha).
- The Flynn family business supply potatoes to major Irish markets (evidence submitted).
- Living on the farm on a full-time basis is required for the management and security of the farm and need to be on call 24hrs a day.
- Cahal is actively engaged with the local community

Compliance with Project Ireland 2040-National Planning Framework.

- The applicant can demonstrate an economic need to live on the site in line with objective NPF 19.
- There is a clear and undeniable need to live on the farm.

Compliance with the Sustainable Rural Housing Guidelines (2005).

- The guidelines support rural dwellings for persons who are an intrinsic part of the rural community and those working full-time or part-time in the rural area.
- Cahal can comply with both claims.

Development is not contrary to Objective RF31.

- It is clear that Cahal can comply with Objective RF38 and RF34.
- It is requested that the Board consider a grant of permission in accordance with Section 37 (2) (b).
- It is believed there are conflicting objectives in the development plan (S37 (2) (b)(ii)).
- The proposal can be permitted having regard to regional or national policy (S37 (2)(B)(iii). The applicant can comply with the NPF 19 and the Sustainable Rural Housing Guidelines (2005).
- In relation to S 37 (2) (b)(iv) planning precedence has been set by a recent grant of permission ABP 307483 (Reg Ref F20A/0089). The Board permitted

development under S37(2)(b)(ii) on the basis that the applicant was actively engaged in the running of a farm at this location.

#### Planning Authority's Assessment of Application

- The PA note the absence of confirmation of involvement in the Quality Assurance Scheme management by Bord Bia for the previous 3 years.
- A collection of Bord Bia documentation has been submitted.

#### Flood Risk, Service and Drainage

- It is confirmed that Aidan Geraghty is a qualified (FETAC) and experienced competent person who can supervise the construction of on-site wastewater treatment systems.

#### Site services and Flood Risk Assessments.

- There were no concerns raised by the Water Services or Irish Water in relation to the previous applications Reg Ref F19A/0424 or Reg Ref F18A/0519.
- As part of this application the PA had concerns in relation to the flood risk assessment, this was not raised previously.
- A preliminary review of the latest OPW Flood Maps indicates the site is not in or in the proximity to any flood zones.
- The site is not susceptible to fluvial or coastal flooding.

#### Design and Visual Impact

- The PA have raised issue with the design of the dwelling in particular the lack of ordered window opes, especially to the front gable projections.
- The PA note houses in the vicinity of the site are lower scale or where two storey a simpler format.
- It is submitted that the design of dwelling is taken from the Rural Design Guide and provides a traditional and simple for, appropriate to the site.
- The dwelling is set back from road and the landscaping is appropriate.
- An audit of permitted dwellings in the vicinity of the site have been submitted.

- Permission F17A/0147 has been detailed as an example accepted by the PA.

## 6.2. Planning Authority Response

6.2.1. The PA have responded to the grounds of appeal referring the CE order, decision reports and internal departmental reports.

- Reference is provided to Objective RF31 (max one dwelling per family) and Objective RF34 (one dwelling per family on lands zoned GB) of the development plan.
- The reason for refusal is reiterated.

## 6.3. Observations

None submitted.

## 7.0 Assessment

7.1. The main issues of the appeal can be dealt with under the following headings:

- Principle of Rural Housing Need
- Design of the dwelling
- Water, Wastewater and Flooding
- Appropriate Assessment.

### **Principle of Rural Housing**

#### Background and Planning History

7.2. The PA have refused the applicant permission for a rural dwelling, adjacent to his family home as it is located on lands zoned GB-Greenbelt, where it is an objective "To Protect and provide for a Greenbelt". The PA consider the proposal is contrary to Objective RF31 and Table RF01 which permits a maximum of one dwelling for a family member. Permission was granted in the vicinity of the site, for the applicant's brother under F17A/0147. In this regard the PA consider the maximum dwellings have been permitted on the land holding and permission can not be permitted for the applicant.

7.3. This application is the third by the applicant, Cahal Flynn, for a rural dwelling on the subject site, Reg Ref F18A/0519 and Reg Ref F19A/0424. Previous applications

have been refused for similar reasons, where the PA have considered the granting of permission for the applicant's brother has essentially used the allowance for a rural dwelling on the family land holding. I note both applications have been refused having regard to the location within the greenbelt and the maximum allowance for one dwelling on a family holding. The 2019 application makes reference to Objective RF31 in the reason for refusal whilst the 2018 application makes reference to Objective RF34. The reason for refusal on the current application includes reference to Objective RF31. I will address the details of each of these objectives in detail below.

#### Grounds of Appeal

- 7.4. The grounds of appeal, in the most part, consider the PA decision is incorrect and full consideration has not been given to the circumstances of the applicant. It is considered that the applicant has a "desirable economic need to reside on a full-time basis" having regard to his involvement with the family farm.
- 7.5. A significant amount of supporting documentation has been submitted with the grounds of appeal of which the majority relates to the operation of Paud Flynn & Sons. It is stated in the submitted documentation that Paud Flynn & Sons is a horticultural farm owned by the applicant's grandfather, his father, and uncles. A letter of support from the five owners accompanied the grounds of appeal.
- 7.6. Additional supporting documentation relates to the applicant's links to the farm and rural area. Letters from schools, the GAA club and self-certification provide certification that the applicant has links to the rural area, whilst letters of support from companies associated with Paud Flynn & Sons refer to the applicant's involvement with the farm.
- 7.7. I note the location of the applicant's family home and that documentation submitted stating he is from the area. In this regard, I note the applicant has certain links to the rural area. The PA do not content the absence of any rural links rather the focus in the planning report relates to the grant of permission for applicant's brother and non-compliance with Objective RF38. I have assessed this compliance in detail below.



### Objective RF38

- 7.8. A “Supplementary Application Form for Planning Permission for a Dwelling in a Rural Area” accompanied the application. The applicant considers qualification under Objective RF38 (actively engaged in farming the family farm) is applicable. The eligibility criteria for this category is set out in Objective RF38 of the Rural Settlement Strategy of the development plan. Compliance with a list of criteria is required, *inter alia*, family farm ownership, working and actively managing a farm in the ownership of the applicant’s family and supported with documentary evidence. Table RF02 includes a maximum of one house to be permitted per house on lands located in the GB-Greenbelt zoning. The PA note that permission already granted to the applicant’s brother (F17A/0147). In this regard, the PA consider the applicant can not comply with the requirements of Objective RF38 and permission cannot be granted.
- 7.9. The Board will note the policies of the development plan do permit new housing for farming families although in areas under greater pressure within the rural area the policies restrict the numbers of those new dwellings per family home. The rationale for this is to allow a certain level of support for rural communities whilst also protecting the rural area as a valuable resource. The greatest protection is afforded to lands located in GB-Greenbelt and HA-High Amenity. Other areas classified as RU-rural are permitted two dwellings, plus additional with exceptional health or farming circumstances. A strategic policy of the development plan for the County of Fingal is to “*strengthen and consolidate greenbelts around key settlements*”. Therefore, I consider Objective RF38 and Table RF02 appropriate for the protection of the greenbelt lands.
- 7.10. Having regard to the location of the site, the overarching policies and objectives of the development plan relating to the protection of greenbelt lands and the previous permission granted to the applicant’s brother, I consider the reason for refusal against Objective RF38 and Table RF02 is reasonable. In this regard I consider the proposed development in contrary to both Objective RF38 and Table RF02.

### Rural Housing Need

- 7.11. In terms of employment, as stated above, the applicant states they are employed on the family farm, Paud Flynn & Sons and in conjunction with his brother, there is a need to be available 7days a week, 24hours a day. It is stated throughout the

documentation that the farm is in ownership by both the applicant's father and other family members. The company employs 25 people. The grounds of appeal contend the PA refusals have seriously jeopardised the economic and operational capacity of the Flynn's family farm and that the applicant must live at this location for employment. Aside from letters of support from buyers of the potatoes, a letter from Teagasc in July 2018 has been submitted as evidence of Cahal's employment with Paud Flynn & Sons. Other submitted documentation relates to the general operation of Paud Flynn & Sons and not specifically Cahal. Certification letters from Bord Bia are addressed to a general office for Paul Flynn & Sons in Rush, Co. Dublin. I note from the documentation a larger extended family network is involved in the running of the farm business and having regard to the current operation and other family involvement I do not consider the applicant's contention that the refusal will jeopardise this farm operation to be reasonable.

- 7.12. In relation to employment on the farm, the Board will also note the criteria in Objective RF38 specifically requires proof of the active engagement of the applicant in the running of a farm. This is ultimately required to prove a need to live at this location. I find no striking evidence within the submitted documentation that the applicant has a need, rather than a desire, to live at this location. The applicant states that his brother is also involved in the farm and the Board will note the grant of permission in the vicinity of the site. In addition, the farm, as a horticultural activity would not have the same urgency for residing on a farm as one would with a livestock farm.
- 7.13. Having regard to the documentation submitted, I have concerns in relation to the applicant's current housing need. Bank statements up to 2016 have been submitted and a Tax certification from 2013. No recent personal correspondence linking the applicant to the family home has been submitted. Whilst I note this is not one of the criteria for compliance with Objective RF38, the Board will note the grounds of appeal contents the PA have not fully assessed the applicant's need to live at this location. Therefore, having regard to the absence of current personal documentation, the applicant may currently reside outside this rural location. In this regard, I can not conclude the applicant has a genuine housing need.
- 7.14. The Board will note that the above investigation into rural housing need are not necessarily required to assess the applicant's need against Objective RF38 of the

development plan, they are directed to the grounds of appeal which believe the PA have not fully assessed the applicants need to live in this rural location. Having regard to the above assessed, it is my opinion, that the applicant has not submitted sufficient documentation so as to prove the need to reside at this location. This assessment is also relevant to the applicant's assertion that the Board should override the requirements of Objective RF38 by applying the criteria in the National Planning Objective (NPO 19) of the National Planning Framework (NPF) and ultimately grant permission under S37(2) (b) of the Planning and Development Act, 2000, as amended. This is further discussed below.

#### National Planning Framework (NPF)

- 7.15. The grounds of appeal make reference to the National Planning Framework and NPO 19 which requires that in rural areas under urban influence the provision of single housing in the countryside is 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*". The applicant considered enough information has been supplied with the application to demonstrate the applicant has an economic need to live at this location. The grounds of appeal refer to a "*desirable economic need to reside on a full-time basis*". I consider any application for compliance with NPO 19 should be a necessary economic need rather than a desirable need.
- 7.16. The Board will note my assessment above in relation to the applicant's rural housing need. In this regard, it is my opinion that the applicant has not submitted sufficient evidence to compliance with the requirements of NPO 19 and therefore, the applicant has no demonstrable economic need to live at this rural location.

#### Material Contravention

- 7.17. The grounds of appeal submit that the proposed development should be granted having regard to S 37 of the Act. The applicant submits that the proposal can meet the criteria as there is a conflict of policies in the development plan, the applicant can comply with national policy and guidance and there is precedence with Board decisions for a grant of permission of similar types of proposals.

7.18. Section 37(2)(b) of the Planning and Development Act of 2000 as amended provides that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with specific criteria, where it considers section 37 (2) (b) of the Act of 2000 were to apply. I have provided an assessment under each of the criteria listed under Section 37 (2) (b) as follows;

*i) the proposed development is of strategic or national importance.*

The proposal is for a one-off rural dwelling. I do not consider the proposal is of any strategic or national importance. Therefore, it is my opinion that permission should not be granted having regard to S37 (2)(b)(i) of the act.

*ii) there are conflicting objectives in the development plan, or the objectives are not clearly stated, insofar as the proposed development is concerned,*

The applicant considered there is a conflict in the objectives RF31 and RF34 of the development plan. The applicant considered it may be construed that Objective RF34 permits one additional dwelling on these lands for a farm family (i.e. the applicant in this instance) in lieu of the exceptional health circumstances or on top of the dwellings permitted under Objective RF31.

For the Boards reference, I have stated the polices referred to in the grounds of appeal:

- Objective RF31: Permit a maximum number of one incremental house for those who meet the relevant criteria set out in this chapter within areas with the zoning objective HA or GB plus one house for a person with exceptional health circumstances.
- Objective RF34: Permit up to two additional dwellings per farm family in areas with the zoning objective, RU, and one additional dwelling per farm family within areas with the zoning objective GB or HA, where the applicant demonstrates their direct participation in running the family farm and is considered to have a demonstrated need relating to the working of the farm to reside on the family farm.

I note the information contained in both objectives and I consider it is clear that one dwelling per family is permitted in areas designated GB. Objective RF31 further

clarified that an additional one dwelling will be permitted for a person with exceptional health circumstances. The Board will note further elaboration in other policies in the development plan on rural housing on lands designated GB, including Objective RF39 and Table RF03. The additional information also provides clarification that one dwelling per family is permitted plus an additional one dwelling for those with exceptional health circumstances.

In this regard, I consider the development plan is clear and there are no conflicting objectives relating to the granting of permission for dwellings on lands zoned as greenbelt. Therefore, I do not consider permission should be granted under S 37 (2)(b)(ii) of the act.

*iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government,*

The grounds of appeal consider the proposed development complies with NPO 19 of the NPF and Section 3.2.3 of the Sustainable Rural Housing Guidelines (2005). As stated above, it is my opinion that the applicant does not have sufficient demonstrable evidence to suggest that there is an economic need to live at this location within the rural area. In addition, the Board will note the location of the site, some c.2km (as the crow flies) to the north of Swords. NPO19 of the NPF provides reference on the development of rural housing in areas under urban influence and elsewhere. I note the rationale for this designation is to provide the upmost protection to those areas under significant pressure from development and the need to protect the rural area as a valuable resource. I consider permitting development for rural dwellings, where there is not demonstrable need to live at that specific location, would erode this valuable resource.

Similar to the NPF, the rural housing guidelines also include reference to areas under urban influence. I note the applicant's reference to Section 3.2.3 of these guidelines which permits those persons who would constitute a rural generated housing need who are intrinsic part of the rural community or work full-time in the rural area. I note the guidance requires those proposals within areas under

significant urban pressure to be consistent with the rural settlement approach in the development plan. I also note the development plan provides an allowance for family members to live in these locations, albeit restricted to one per family. As stated above, I consider those objectives of the development plan are reasonable and, it is my opinion they have reasonably transferred the spirit these national guidelines for local implementation.

In this regard, I do not consider it reasonable to grant permission for the proposed development under S 32 (b) (2) (iii).

*iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

The applicant submits that ABP-307483-20 has set a precedence for a grant of permission. It is submitted in the grounds of appeal that the Board based their decision having regard to the location of the site in an area Under Strong urban Influence, the Sustainable Rural Housing Guidelines and NPO 19 and considered the applicant was involved in active engagement with running a farm and could therefore comply with the national guidelines and polices.

I note the facts of the case ABP-307483-20, in particular the zoning on the site which is "RU-Rural" which is substantially different to the zoning applicable to the subject site "GB-Greenbelt". To begin, that area designated greenbelt is under significantly more pressure from erosion due to its location relative to settlements. Table RF01 of the development plan permits 2 dwellings per house under the zoning objective RU, whilst it is more restrictive for the GB zoning where only one dwelling per house is permitted. In addition, I note the information in the Inspector's Report (ABP-307483-20) relating to the circumstances of the applicant, whereas they are the main owners of the farm with responsibility for livestock. The particulars of this application are completely different, and I do not consider this permission is relevant to any determination under this section of the Act.

7.19. Therefore, having regard to my assessment above I consider a grant of permission under Section 37 (2) (b) of the Planning and Development Act 2000 (as amended), is not justified in this instance.

## **Dwelling Design**

- 7.20. The grounds of appeal note the PA concerns in relation to the design of the dwelling. The planners report noted the *“lack of ordered window opes, especially to the front gable projections”* and considered they drew attention to the features and scale of the building. The planner considered the scale of the building greater than those in the vicinity and within the GB- greenbelt zoning.
- 7.21. The grounds of appeal consider the design of the dwelling is in keeping with the Rural Design Guide, provides a traditional and simple form of dwelling and is appropriate and sympathetic to the area. An audit of permitted dwellings in the surrounding are has been included in the grounds of appeal.
- 7.22. Table 12.4 of the development plan provides guidance for the design of rural dwellings. In relation to materials and detailing, new dwellings should use materials sensitive to the location and use a design of a simple form with narrow spans/pitches for roofs. The window portions should complement the style of the building.
- 7.23. I note the materials of plaster and brick are acceptable to comply with the requirements of Table 12.4. In relation to the design, I note the pitch of the roof is relatively narrow. Whilst I do not consider the overall design of the dwelling is traditional, I do not consider it overly detailed. I note the window design is not symmetrical nor reflective to the style of the dwelling and can not be considered simple. I consider any alterations to the design of the dwelling could be reasonably included as a condition on any grant of permission.
- 7.24. In relation to the height, the dwelling is 0.9m higher than the adjoining dwelling. I note those contiguous elevations submitted with the application and I do not consider the difference in height is significant to have a negative impact on the adjoining dwelling or the surrounding area.

## **Water, Wastewater and Flooding**

- 7.25. The proposed development includes a tertiary treatment system and percolation area designed for 6 persons the applicant has not proposed any secondary treatment. The applicant proposes to connect to the mains water supply.
- 7.26. A site characterisation form was submitted with the application which states that the soil type is till derived mainly from limestone. The aquifer category is *Locally*

*Important*, and the vulnerability is *low*. The groundwater protection response is 'R1', i.e. the soils are acceptable subject to normal good working practice.

- 7.27. The trial hole assessment submitted by the applicant encountered no bedrock/ water table at a depth of 2.3m. The trial holes had been covered and where not available for inspection. The Board will note the site is flat and used for potatoes crops, no evidence of ponding etc where evidence on the site. The submitted site characterisation records a T-test value of 30 min/25mm. Table 6.3 of the EPA Code of Practice 2009 considers this value acceptable. A P-value has also been provided of 20.39min/25mm and reference to Table 10.1 of the EPA Code of Practice.
- 7.28. Having regard to the information submitted in the site characterisation from and from inspection of the site characteristics, I consider the site can accommodate a wastewater treatment system.

#### Flooding

- 7.29. The report of the water section noted no objection to the proposal subject to the submission of a flood risk assessment. Reference was provided to a stream at the rear of the site. The grounds of appeal have response to this request. It is stated that the site is not located within any flood zone as per the OPW flood maps. I note these flood maps and having regard to the information contained in the site characterisation form, the flat topography of the site and the scale of the proposed ground water and surface water discharge associated with one dwelling, I do not consider the proposal would have a significant negative impact on the stream 50m to the rear of the site.

#### **Appropriate Assessment**

- 7.30. An Appropriate Assessment screening report was submitted with the application which concluded the proposed development would not have a significant impact on an European Sites.
- 7.31. The site is located c.3.6km to the north west of the Malahide Estuary SAC (site code 000205), c. 4km to the north west of the Malahide Estuary SPA (site code 004025), c. 3.6km to the east of Rogerstown Estuary SAC (site code 000208) and c.4.3m to the east of Rogerstown Estuary SPA (site code 004015).



European Site	Qualifying Interest	Conservation Objectives
<p>Malahide Estuary SAC (site code 000205)</p>	<p>Mudflats and sandflats not covered by seawater at low tide [1140]</p> <p>Salicornia and other annuals colonising mud and sand [1310]</p> <p>Atlantic salt meadows (<i>Glauco-Puccinellietalia maritimae</i>) [1330]</p> <p>Mediterranean salt meadows (<i>Juncetalia maritimi</i>) [1410]</p> <p>Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120]</p> <p>Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]</p>	<p>To restore the favourable conservation condition of Atlantic salt meadows and the grey and white dunes in Malahide Estuary SAC, which is defined by the list of attributes and targets for each species.</p> <p>To maintain the favourable conservation condition of the remaining habitats in Malahide Estuary SAC, which is defined by the list of attributes and targets for each species.</p>
<p>Malahide Estuary SPA (site code 004025)</p>	<p>Great Crested Grebe (<i>Podiceps cristatus</i>) [A005]</p> <p>Light-bellied Brent Goose (<i>Branta bernicla hrota</i>) [A046]</p> <p>Shelduck (<i>Tadorna tadorna</i>) [A048]</p> <p>Pintail (<i>Anas acuta</i>) [A054]</p> <p>Goldeneye (<i>Bucephala clangula</i>) [A067]</p> <p>Red-breasted Merganser (<i>Mergus serrator</i>) [A069]</p> <p>Oystercatcher (<i>Haematopus ostralegus</i>) [A130]</p> <p>Golden Plover (<i>Pluvialis apricaria</i>) [A140]</p> <p>Grey Plover (<i>Pluvialis squatarola</i>) [A141]</p> <p>Knot (<i>Calidris canutus</i>) [A143]</p> <p>Dunlin (<i>Calidris alpina</i>) [A149]</p> <p>Black-tailed Godwit (<i>Limosa limosa</i>) [A156]</p> <p>Bar-tailed Godwit (<i>Limosa lapponica</i>) [A157]</p>	<p>To maintain the favourable conservation condition of those species in the SPA defined by their specific list of attributes and targets.</p>

	Redshank ( <i>Tringa totanus</i> ) [A162] Wetland and Waterbirds [A999]	
Rogerstown Estuary SAC (site code 000208)	Estuaries [1130] Mudflats and sandflats not covered by seawater at low tide [1140] Salicornia and other annuals colonising mud and sand [1310] Atlantic salt meadows ( <i>Glauco-Puccinellietalia maritimae</i> ) [1330] Mediterranean salt meadows ( <i>Juncetalia maritimi</i> ) [1410] Shifting dunes along the shoreline with <i>Ammophila arenaria</i> (white dunes) [2120] Fixed coastal dunes with herbaceous vegetation (grey dunes) [2130]	To maintain the favourable conservation condition of all those habitats. apart from the dunes listed below, in Rogerstown Estuary SAC, which is defined by a list of attributes and targets for each habitat.  To restore the favourable conservation condition of Shifting dunes along the shoreline with <i>Ammophila arenaria</i> ('white dunes') in and Fixed coastal dunes with herbaceous vegetation ('grey dunes')
Rogerstown Estuary SPA (site code 004015).	Greylag Goose ( <i>Anser anser</i> ) [A043] Light-bellied Brent Goose ( <i>Branta bernicla hrota</i> ) [A046] Shelduck ( <i>Tadorna tadorna</i> ) [A048] Shoveler ( <i>Anas clypeata</i> ) [A056] Oystercatcher ( <i>Haematopus ostralegus</i> ) [A130] Ringed Plover ( <i>Charadrius hiaticula</i> ) [A137] Grey Plover ( <i>Pluvialis squatarola</i> ) [A141] Knot ( <i>Calidris canutus</i> ) [A143] Dunlin ( <i>Calidris alpina</i> ) [A149] Black-tailed Godwit ( <i>Limosa limosa</i> ) [A156] Redshank ( <i>Tringa totanus</i> ) [A162] Wetland and Waterbirds [A999]	To maintain the favourable conservation condition of the species listed as qualifying species SPA, which is defined by specific list of attributes and targets for each species.

The stream is located to the rear of the site, which flows into the Broad Meadow River, which eventually leads into the Malahide Estuary. Having regard to the

distance of the stream at about 50m from the rear of the boundary of the site and the information contained in the site characterisation form I do not consider there is a direct hydrological pathway between the site and the Malahide Estuary SAC. pathway could be via groundwater. Having regard to the site conditions and the proposed wastewater treatment system, I do not consider there is a risk to ground contamination.

In relation to the SPA's, I note the site is separated from both the Malahide Estuary SPA and the Rogerstown Estuary SPA, in the most part, by the motorway and there is no direct connection to the site. The site is used as agricultural and currently planted, no habitats are identified which are necessary to support those species of interest in either SPA.

Having regard to the nature and scale of the proposed development, the information on the file and the nature of the receiving environment, no appropriate assessment issues arise. It is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on any European Site.

## 8.0 Recommendation

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

## 9.0 Reasons and Considerations

Having regard to the location of the site within "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 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, and in an area where housing is restricted to persons demonstrating local need in accordance with Objective RF39 and Table RF03 of the Fingal County Development Plan 2017-2023, it is considered that the applicant has not demonstrated that they come within the scope of the

housing need criteria as set out in the National Planning Policy, Guidelines or the Development Plan for a house at this location. Furthermore, the site is located on lands zoned as GB-Greenbelt in the Fingal County Development Plan 2017-2023, where it is an objective to restrict one dwelling per family. Having regard to the previous grant of permission for the applicant's brother (F17A/0147) the proposed development would be contrary to Objective RF31 of the Fingal County Development Plan 2017-2023, would contribute to the encroachment of excessive 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.

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Karen Hamilton  
Senior Planning Inspector

17<sup>th</sup> of May 2021