



An
Bord
Pleanála

Inspector's Report ABP-309797-21

Development	House
Location	Windmill Hill, Carrigeen, Rathcoole, Co. Dublin.
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD20A/0353
Applicant(s)	John & Clara Chambers
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	John & Clara Chambers
Observer(s)	None
Date of Site Inspection	17 May 2021
Inspector	Una Crosse

1.0 Site Location and Description

- 1.1. The site has a stated area of 0.485 hectares and is located on a laneway (Carrigeen Lane) accessed from Windmill Hill to the northwest. This lane is a 'no through road'. The laneway is surfaced from its junction at Windmill Road to a point close to the site access which facilitates access to lands adjoining the lane and two houses located directly to the northwest of the appeal site. The lane continues past the appeal site as a gravelled lane, which is poor in vertical and horizontal alignment to the southeast and onto the Kilteel Road. The site forms part of a landholding stated to be 17 hectares which stretches down to and across the Kilteel Road. The site is bounded by hedgerow and is relatively flat within a wider area which slopes from north to south. The site has an existing access from the lane at a point where it is gravelled.

2.0 Proposed Development

- 2.1. The proposal seeks permission for a four-bed dwellinghouse with a stated area of 214 sq.m which is designed in two interconnecting elements in a 'T' layout. A single storey pitched element is connected via a single storey flat element to a two storey pitched structure the gable of which addresses the entrance. The finishes proposed include a rendered painted finish to the walls, timber cladding, slate roof and aluminium parapet trim to the flat roof with the ridge height 7.2 metres. It is proposed to service the site via an on site well and a wastewater treatment system. It is also proposed to surface the road for the length of the site boundary.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission for seven reasons which are summarised as follows:

1. The applicants have not provided enough justification to warrant the setting aside of objectives of Policy H20. It would materially contravene development plan

objectives and would lead to uneconomic demands for the uneconomic provision of further public services and facilities in this rural area.

2. Site in area zoned Objective RU, within an area under strong urban influence and pursuant to policies in NPF and Core Strategy and Rural Settlement Strategy in CDP proposal would by itself and cumulatively constitute the proliferation of urban generated housing in a rural area and hinder achievement of NPF to consolidate existing settlements. Proposal would contravene the zoning objectives.
3. The proposal would represent proliferation of further one-off housing in the Dublin Metropolitan Area and would prejudice the achievement of the regional settlement strategy policy for the Eastern and Midlands Region.
4. The proposal located in the Athgoe and Saggart Hills Landscape Area where any increase in development in the area will have a negative impact on both landscape value and sensitivity of the area and would materially contravene development plan policy HCL7.
5. Proposal would set an undesirable precedent for other similar development which themselves and cumulatively would be harmful to the rural amenities of the area.
6. Proposal would cater for continuation of ribbon development and would be contrary to Sustainable Rural Housing Guidelines which recommend against creation of such ribbon development on basis of road safety, future demands for the provision of public infrastructure and visual impact.
7. Insufficient details have been submitted in terms of proposed water, surface water and foul drainage systems, not demonstrated by applicant that proposal is consistent with Greater Dublin Regional Code of Practice for Drainage Works or with the Irish Water Standards details and the Building Regulations 2010 Technical Guidance Document B.

3.2. Planning Authority Reports

3.2.1. Planning Report

The Assessment in the Planning Report is summarised as follows:

- Planning history on the site is noted as is applicant's application under Ref. SD20A/0354.
- Site zoned RU with details of same outlined.
- Site situated in area under strong urban influence pursuant to NPF and Core & Rural Settlement Strategy in SDCC Development Plan.
- Proposal would represent proliferation of further one-off housing and would prejudice the sustainable achievement of consolidation in RSES.
- Site within area defined as under strong urban influence in Sustainable Rural Housing Guidelines.
- Pursuant to Policy H22 Objective 1 applicants have included documentation stating they currently reside with applicant's father/father in law on a dwelling on family farm lands with connections to the area outlined by way of supporting documentation.
- Applicant's father/father-in-law has on-going health issues which requires son to live close by and assist in running of the farm with one applicant working from (fathers) home and the other in the wider area.
- Noted neither applicants' respective employment may be considered reliant on provision of an additional rural house or be considered related to the rural community.
- Notes supporting information demonstrating applicant have a close family connection with the site and noted intention of applicant to inherit the family farm with neither applicant owning another property.
- Pursuant to refusal reason 1 on previous application (SD18A/0414) applicant have not adequately demonstrated how their current housing needs cannot be facilitated in other housing options in the wider area.
- PA acknowledge close family ties, not considered in this instance that applicant has demonstrated justification that would warrant setting aside of policy H20 where it is policy to restrict spread of dwellings in rural RU and other areas.
- In accordance with Policy H20 proposal would further exacerbate a pattern of unsustainable ribbon development along this rural road off Windmill Road which

would further erode the rural character of the area setting a precedent for future developments of a similar nature.

- Architectural style contemporary.
- Stated that no direct evidence to support views and opinions of Arboriculturist that Arboricultural Impact Assessment and Statement not required.
- Landscape Design Statement does not adequately address the various policies identified under reason for refusal 9 of SD18A/0414.
- Roads report states proposal would result in an increase in dwelling density of a rural area which would endanger public safety due to the generation of additional traffic movements on a substandard rural road network.
- Noted frontage of approximately 60m provided and applicant proposes to extend road surface for full length of site frontage. Refusal recommended.
- Proposal located in Athgoe and Saggart Hills landscape area with any increase in development in the area having a negative impact on landscape value and sensitivity contrary to policy HCL7. As per refusal reason 5 of previous application, applicant has not demonstrated how this has been addressed and overcome.
- Windmill Hill to north of site subject to a protected prospect (Map Ref. 3) and HCL3 SLO3 which seeks to secure the preservation of Windmill Hill and pursuant to Landscape Character Assessment, protected prospect and topography of the site and its contextual environs considered proposal is contrary to Policy HCL8, Objective 1 which seeks to preserve views of special amenity, historic or cultural value of interest.
- Design rationale and information received in landscape masterplan, design statement and planting plan not sufficient to materially contravene the policies and objectives of the CDP and allow development on the site.
- Further information requested by Water Services Section noting no report showing percolation test results for proposed soakaway and no detailed drawings of soakaway.

- Insufficient details submitted on surface water drainage therefore a full and comprehensive screening report cannot be undertaken.

3.2.2. **Other Technical Reports**

Water Services Section – FI required – report showing percolation test results at location of proposed soakaway; drawing in plan and cross-section showing details of soakaway; water butts to be included as part of SuDS. No objection in relation to flood risk.

Irish Water – No response.

Parks and Landscape Services – No objection provided landscape proposals are implemented and boundary trees and hedgerows are retained where possible. Conditions proposed.

Roads – noted site is on laneway with no through road and status of the road should be clarified. Proposal has frontage of 60m and applicant proposes to extend road surface for length of site. Refusal recommended based on provision of additional dwelling at this location which would result in an increase in dwelling density of a rural area endangering public safety due to generation of additional traffic movements on a substandard rural road network.

Environmental Health – trial holes accessible and as described in report with trial pit relatively dry and no evidence of a raised water table level. Development acceptable subject to conditions on noise, air quality and wastewater treatment.

3.3. **Prescribed Bodies**

- 3.3.1. **An Taisce** – Application should be assessed with regard to impact on the amenity of the area and relevant provisions of CDP. No reason provided in documents as to why a house is needed in the country rather than in a town in accordance with Government Regulations.

3.4. **Third Party Observations**

- 3.4.1. Concerns raised by two adjoining dwelling owners with regard to potential impact on the stability of their electricity supply. Unstable voltage repeatedly reported and currently being investigated. Issues manifest in dimming lights, power surges which

disconnect broadband and television supply and heat pump. Concerned increase in energy consumption on same line/transformer will result in further deterioration/issues.

4.0 Planning History

4.1. SD18A/0414

Permission for a dwelling house refused permission for 10 reasons which are summarised as follows as they are referenced in the Planners Report:

1. No justification provided to warrant setting aside of objectives of Policy H20 (restrict dwellings on RU lands) and would materially contravene development plan.
2. Site in area under strong urban influence in NPF and Core and Rural Settlement Strategy in CDP with proposal constituting proliferation of rural housing hindering achievement of objectives in NPF.
3. Contrary to Policy H22 where new or replacement dwellings permitted only in exceptional circumstances. Sufficient justification not provided in relation to genuine need nor have they demonstrated how needs cannot be met by their current accommodation.
4. Proposal would represent proliferation of one-off housing in Dublin Metropolitan area which would prejudice sustainable achievement of approved Regional Settlement Strategy for Greater Dublin Area.
5. Materially contravene policy HCL7 which seeks to preserve and enhance the character of the County's landscape.
6. Create a ribbon form of development and undesirable precedent for other similar development materially contravening the RU zoning.
7. Undesirable ribbon development on a substandard rural road network.
8. Undesirable precedent for other similar development which would be harmful to rural amenities of the area.
9. Insufficient details provided on landscape.
10. Insufficient details on surface water drainage.

4.2. **SD17A/0137**

Permission for a two-storey dormer style house refused permission for 6 reasons.

4.3. **SD07A/0595**

Permission for a dormer dwelling granted permission in September 2007 with extension of duration of permission granted in April 2012.

4.4. **Other Site on Landholding**

- 4.4.1. **SD20A/0354** – Applicant sought permission for a dwellinghouse on a site to the southwest directly adjoining the Kiltel Road. Permission was refused.

4.5. **Adjacent Sites**

- 4.5.1. The Planners report notes a number of other decisions relating to dwellinghouses adjoining the site.
- 4.5.2. The house furthest to northwest of the appeal site was granted permission for demolition of the existing bungalow and construction of new dwelling under SD18A/0431 with permission refused under SD18A/0432 & SD17A/0625.
- 4.5.3. The house directly adjacent to northwest was permitted under SD07A/0727 following two decisions to refuse permission – SD05A/0771 & SD06A/1115

5.0 **Policy Context**

5.1. **National Policy**

5.1.1. **National Planning Framework**

Policy Objective 15: Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

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.

5.1.2. Sustainable Rural Housing Guidelines for Planning Authorities

The Guidelines refer to persons considered as constituting those with rural generated housing needs being persons who are an intrinsic part of the rural community, or working full-time or part-time in rural areas. The Guidelines refer to persons who are an intrinsic part of the community as having ‘spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes’.

5.2. Regional Policy

5.2.1. Eastern & Midland Regional Spatial & Economic Strategy 2019-2031

RPO 4.80: Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3. Local Policy - South Dublin County Development Plan 2016-2022

The site is within an area zoned Rural 'RU' the objective for which is to protect and improve rural amenity and to provide for the development of agriculture. Residential development is open for consideration.

Section 2.5.0 refers to Rural Housing. The Plan states that 'It is the policy of the Council to restrict the spread of dwellings into rural and high amenity areas'.

5.3.1. Policy H20 - Management of Single Dwellings in Rural Areas

Restrict the spread of dwellings in the rural 'RU', Dublin Mountain 'HA-DM', Liffey Valley 'HA-LV' and Dodder Valley 'HA-DV' zones and to focus such housing into existing settlements.

5.3.2. Policy H21: Rural Housing Policies and Local Need Criteria

It is the policy of the Council that in accordance with the Sustainable Rural Housing Guidelines DEHLG (2005) and Circular SP 5/08 Rural Housing Policies and Local Need Criteria in Development Plans: Conformity with Articles 43 and 56 (Freedom of Establishment and Free Movement of Capital) of the European Community Treaty, "persons who are an intrinsic part of the rural community" or "persons working full-time or part-time in rural areas" as described under Section 3.2.3 (Rural generated housing) of the Sustainable Rural Housing Guidelines (2005) shall be favourably considered in relation to rural housing.

5.3.3. Policy H22 - Rural Housing in RU zone

It is the policy of the Council that within areas designated with Zoning Objective 'RU' (to protect and improve rural amenity and to provide for the development of agriculture) new or replacement dwellings will only be permitted in exceptional circumstances.

H22 Objective - To consider new or replacement dwellings within areas designated with Zoning Objective "RU" (to protect and improve rural amenity and to provide for the development of agriculture) where:

- The applicant can establish a genuine need to reside in proximity to their employment (such employment being related to the rural community) OR
- The applicant has close family ties with the rural community.

5.3.4. **Policy H27 Rural House & Extension Design:**

It is policy of the Council to ensure that any new residential development in rural and high amenity areas, including houses and extensions are designed and sited to minimise visual impact on the character and visual setting of the surrounding landscape.

H27 Objective 1:

Ensure that all new rural housing and extensions within areas designated with Zoning Objective 'RU'.....: (inter alia)

- Is designed and sited to minimise impact on the landscape including views and prospects of natural beauty or interest or on the amenities of places and features of natural beauty or interest including natural and built heritage features; and.....
- Would not create or exacerbate ribbon or haphazard forms of development.

5.3.5. **Policy HCL7**

The site is within area designated as Athgoe and Saggart Hills Landscape Character Area where policy **HCL7** states - It is the policy of the Council to preserve and enhance the character of the County's landscapes particularly areas that have been deemed to have a medium to high Landscape Value or medium to high Landscape Sensitivity and to ensure that landscape considerations are an important factor in the management of development.

Windmill Hill to the north of the Windmill Road is subject to HCL3 SLO3 the objective of which is 'to secure the preservation of Windmill Hill, Rathcoole (RPS Ref. 358).

Windmill Hill is also a protected prospect in the CDP (Map Ref. 3)

5.4. **Natural Heritage Designations**

- 5.4.1. The subject site is not located within or adjacent to any designated European Site.

5.5. EIA Screening

- 5.5.1. Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment. 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 first party grounds of appeal are summarised as follows:

- Appellants puzzled and dismayed by Council's attitude in particular its failure to accept their established ties to local rural community as previously accepted in its decision to grant permission under SD07/0595 which was extended in duration (2012).
- Grounds of appeal draw heavily on previous grant on the same site for same applicant which confirmed bona fides in policy terms and appropriateness of site to assimilate dwelling with decision made (2007) following coming into effect of Sustainable Housing Guidelines (2005) which remain in force.
- Policy H20 one of number of rural housing policies (H21, H22, H23) which set out the criteria for a qualifying applicant for a dwelling in zones such as RU. Policy H22 applies to the site requiring applicant establish a genuine need to reside in proximity to their rural related employment or has close family ties with the rural community.
- Text of policy is same as policy H15 from 2004-2010 Plan in effect when permission granted under SD07A/0595 where report states that, from information submitted, the PA was satisfied at that time that the applicant had close family ties with the rural community.
- Since 2007, appellant has continued to live in the rural area in a small cottage with his father with his wife and two children now also residing in the family home with appellants more closely tied to the rural area than in 2007.

- Added requirement to look after appellants father who is in poor health.
- Detailed family history report submitted with application form with appellants close family ties to the area with the family farming in the area since the 1800's.
- Reference in planning officers report to appellants not showing how their current housing needs cannot be facilitated in other housing options is not part of the criteria for compliance with policy H22.
- Provision of dwelling on the family farm for a person to work on that farm is the most and only appropriate location.
- Proposal is not urban generated housing in a rural location (refusal reasons 2 & 3) but rather is rural generated housing for the son of the landowner who also farms the land with his father and who has longstanding close ties to the area.
- Appellants have demonstrable social need for the proposed dwelling at the site and would come within the projected housing capacity for the rural metropolitan area which is state as 75 dwellings.
- Reason for refusal 4 (landscape character) appears to stem from the omission of a visual impact assessment with the planning application. Not accepted that proposal would have any material negative impact on the landscape value and sensitivity. Visual Impact Assessment conducted with annotated photographs attached to appeal which demonstrate that the proposal would have a negligible, if any visual impact.
- Photo location 4 would see glimpses of the roof of the proposed house which it is noted is substantially smaller than the dwelling approved in 2007.
- Landscape plan submitted for proposed development which would further mitigate views.
- Proposal would not impact on protected view at Windmill Road and would not be visible from approaches to the site from Windmill Road or the top of Carrigeen Lane.
- Decision to grant would not set a planning precedent, undesirable or otherwise for any other planning application within the environs of the site or elsewhere.

- Proposed access and layout arrangement largely the same as those approved in 2007 when rural housing guidelines were in force with no mention of ribbon development.
- Proposal could not be defined as comprising ribbon development which is defined in the Rural Housing Guidelines as 5 or more houses on any one side of a given 250m of road frontage. The proposal would comprise a third dwelling along this frontage on Carrigeen Lane within only 3 dwellings within 250m and therefore would not comply with the definition of ribbon development in the Guidelines.

6.2. Planning Authority Response

- 6.2.1. Response states that PA confirms its decision, and the issues raised in the appeal have been covered in the planner's report.

7.0 Assessment

- 7.1. Having inspected the site and considered the contents of the first-party appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of Development/Rural Housing Policy
- Impact on landscape character,
- Precedent,
- Ribbon development,
- Insufficient information on water, surface water, wastewater and roads.
- Appropriate Assessment.

7.2. Principle of Development/Rural Housing Policy

I will address the matters arising in respect of rural housing policy which incorporates the first three reasons for refusal as it relates to the principle of the proposed development on the site.

7.2.1. Rural Housing Policy

The first three reasons for refusal relate in one way or another to the matter of rural housing policy and compliance with same. There are two matters of particular note – firstly that the appellant is considered not to have provided sufficient justification to meet the ‘tests’ set out in the policy and secondly, that the application is considered to comprise urban generated housing within this rural area.

As outlined by the appellants agent Policy H20 is one of a number of rural housing policies (H21, H22, H23) which set out the criteria for a qualifying applicant for a dwelling in zones such as RU. Policy H22 applies to the site requiring the applicant to establish a genuine need to reside in proximity to their rural related employment or has close family ties with the rural community. As outlined in the planning history, and as referenced in the appeal, Mr. Chambers was granted permission to construct a dwelling on this site under Ref. SD07/0595. The permission was extended in 2012 and as outlined within the application documentation, when the appellants were in a position to build the house, that permission had been granted and extended for, they sought permission to change the house type given the time that had lapsed since the permission was granted and their changed circumstances. They did not realise that the information required to establish their compliance with rural housing policy would be required with the resultant decision a refusal (SD17A/0137). This then led to a number of applications on the subject within the appellants fathers farmholding, all of which have been refused by South Dublin County Council including the decision subject of this appeal.

The Planners Report on that file in 2007 states that the PA was satisfied at that time that the applicant had close family ties with the rural community. The appellants agent makes the point that the text of policy pertaining at that time (Policy H15 from the 2004-2010 Plan), is the same as that currently in effect. What is clear is that the appellant has previously been considered to have close family ties with the rural community. It is therefore not clear how those family ties can no longer be considered to apply to the policy pertaining.

I would acknowledge that the national and regional policy considerations have changed such that the area which has been determined to be under strong urban influence and I address National and Regional policies in Section 7.2.3 below. I would

also note that reasons for refusal 2 & 3 both reference urban generated housing in a rural area. I would suggest that the unique circumstances of the appellant provide that given their residence with the landowner in the rural area and the close family ties accepted in 2007, this application and appeal cannot be considered to comprise urban generated housing.

I would also agree with the appellants agent that the reference in the planning officers report to appellants not showing how their current housing needs cannot be facilitated in other housing options is not part of the criteria for compliance with policy H22. It would appear that the planning officer is seeking to apply criteria which would relate to those cases where the housing need is indeed urban generated but this is not the case in the current situation where the appellant has and continues to reside in the rural area.

Finally, as noted by their agent, the appellants have a demonstrable social need for the proposed dwelling at the site given they are residing in the landowners small cottage which is not appropriate for the needs of those currently residing there. I would also note that the development plan has a projected housing capacity for lands within the rural metropolitan area, which is stated as 75 dwellings. This highlights the acceptance by the Planning Authority that there are circumstances whereby a genuine need arises for those who have close family ties and who should be accommodated within the rural area with which they have such ties.

7.2.2. Material Contravention

The Planning Authority have determined under Reason No. 1 that the proposal would materially contravene the Development Plan in respect of Policy H20. Section 37(2)(a)&(b) of the Planning and Development Act 2000, as amended states that:

(a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) 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 paragraph (a) where it considers that—

- (i) the proposed development is of strategic or national importance,
- (ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy 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, or
- (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.

I note that the appellants agent does not address this matter but for the Board's information I will address same. In this regard, I will refer the Board specifically to subsection (iv) which refers to the pattern of development and permissions granted since the making of the Development Plan. While the previous permission to grant permission on the subject site was under a previous plan, I would note that the Planning Authority have granted permission on an adjoining site for a replacement dwelling. The house furthest to northwest of the appeal site was granted permission for demolition of the existing bungalow and construction of a new two-storey dwelling under SD18A/0431. This permission affirms the pattern of development within the immediate area of the site. While I note from the details on that planning file that the permission was granted on the basis that the applicant was returning from abroad and was building a home on the site of the former family home, I would suggest that the appellant in this instance is seeking to develop the site to facilitate their inheritance of the farm upon which the site is located and they have lived in this rural area without any apparent break. I consider that rather than materially contravening the rural housing policy, the appellant would meet the requirements of same. I consider that the Board can grant permission for the proposed development in these circumstances.

7.2.3. National Policy Objective 19 and Regional Spatial and Economic Strategy RPO 4.80

Policy Objective 19 of the BPF seeks to ensure that 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. It continues by stating that in rural areas under urban influence, such as the subject site, facilitating 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. In relation to policy RPO 4.80 in the RSES similarly, it is stated that local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

As has been outlined above in relation to rural housing policy, the proposal does not comprise urban generated housing. The appellant previously satisfied the Planning Authority in respect of their close family ties to this rural area, with the housing need clearly rural generated. Therefore, there is a social need to live in the area.

Furthermore, the information on file clearly outlines that the economic survival of the family farm is dependent on the appellants continued residence in the area to assist his father who is in poor health and to continue the farm once he inherits same. I consider that the proposed development would be in compliance with both the National and Regional policy objectives.

7.3. Impact on Landscape Character

7.3.1. Landscape Impact

The fourth reason for refusal states that the proposal is located in the Athgoe and Saggart Hills Landscape Area where it is considered that any increase in development in the area will have a negative impact on both landscape value and sensitivity of the area and would materially contravene development plan policy HCL7. Policy HCL 7

states that it is the policy of the Council to preserve and enhance the character of the County's landscapes particularly areas that have been deemed to have a medium to high Landscape Value or medium to high Landscape Sensitivity and to ensure that landscape considerations are an important factor in the management of development.

This policy does not prevent development in such areas but rather seeks to ensure that landscape considerations are an important factor in the management of development. The appellants consider that this reason for refusal (4) appears to stem from the omission of a visual impact assessment from the planning application documentation. The appellants do not accept that the proposal would impact on the landscape character, value or sensitivity and I would agree. They have submitted a Visual Impact Assessment they have conducted with annotated photographs attached which they consider demonstrate that the proposal would have a negligible, if any visual impact on the landscape character of the area. I consider that the assessment undertaken is satisfactory and while as stated in relation to photo location 4, where the roof of the recently replaced house is visible, glimpses of the roof of the proposed house would be visible but I do not consider that such views would be detrimental to the character of the landscape. I also concur with the conclusion that the proposal would not impact on protected view at Windmill Road and would not be visible from approaches to the site from Windmill Road or the top of Carrigeen Lane. I consider that the design of the proposed dwelling is very sympathetic to the rural location of the site with the form of the structure reading as a traditional rural complex.

7.3.2. Material Contravention

As outlined above, the Planning Authority have determined under Reason No. 4 that the proposal would materially contravene the Development Plan in respect of Policy HCL7. Section 37(2)(a)&(b) of the Planning and Development Act 2000, as amended states that:

(a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

(b) 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 paragraph (a) where it considers that—

(i) the proposed development is of strategic or national importance,

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

(iii) permission for the proposed development should be granted having regard to regional spatial and economic strategy 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, or

(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.

As I noted above, the appellants agent does not address this matter in the grounds of appeal but I will refer the Board again specifically to subsection (iv) which refers to the pattern of development and permissions granted since the making of the Development Plan. While the previous permission to grant permission on the subject site was under a previous plan, I would note that the Planning Authority have granted permission on an adjoining site for a replacement dwelling. The house furthest to northwest of the appeal site was granted permission for demolition of the existing bungalow and construction of new two-storey dwelling under SD18A/0431. The replacement dwelling has a higher ridge height than what was previously in existence and as detailed in the visual impact assessment undertaken by the appellant, the roof of the replacement dwelling is visible in the visual envelope. I consider that the granting of permission for the replacement structure provides a relevant precedent to support the granting of permission under subsection (iv) in this instance.

7.4. Precedent

- 7.4.1. It is stated in refusal reason No. 5 that permitting the proposal would set an undesirable precedent for other similar developments. Given that the appellants father owns a large area of the land in the vicinity of the site it is not clear how the

subject proposal could create a precedent within the environs of the site. The policy in respect of rural housing is very clearly linked to the person applying for permission and their genuine need/close ties to the area and I therefore do not consider that another person's circumstances could be directly relevant such that the proposed development would create a directly relevant precedent.

7.5. Ribbon Development

- 7.5.1. Refusal reason 6 considers that the proposal would cater for the continuation of ribbon development and would be contrary to the Rural Housing Guidelines which recommends against the creation of such ribbon development. The appellants state that the proposed access and layout arrangement largely the same as those approved in 2007 when rural housing guidelines were in force with no mention of ribbon development. In relation to the Rural Housing Guidelines which the Planning Authority consider, the proposal would be contrary to, the Rural Housing Guidelines define ribbon development as 5 or more houses on any one side of a given 250m of road frontage. The proposal would comprise a third dwelling along this frontage on Carrigeen Lane with only 3 dwellings within 250m of each other and therefore the proposal would not be contrary to the definition in the Guidelines referenced.

7.6. Information on Water, Surface Water and Wastewater and Roads

- 7.6.1. In relation to the final reason for refusal (7) the Planning Authority reference insufficient details in respect of water, surface water and wastewater. I would note that while the Water Services Section consider further information is required, the Environmental Health Department were satisfied in relation to the wastewater treatment system proposed and to the site suitability assessment noting that the trial holes accessible and as described in report with the trial pit relatively dry despite wet weather and no evidence of a raised water table level. Development acceptable subject to conditions relating to the wastewater treatment system.
- 7.6.2. In terms of the issues raised by the water services department, the appellants have provided an updated Site Characterisation Report which concludes that the site is suitable for a septic tank and percolation area but to ensure effective treatment before discharge a treatment system is recommended. It is also stated that the water

table is in excess of 2.4m bgl. The appellants state that the Board should be satisfied given the results of the attached and aforementioned reports that the percolation and soakaway design are compliant with BRE Digest 365 standards. I consider that the matter has been satisfactory addressed.

- 7.6.3. The Roads Section recommended refusal based on the provision of an additional dwelling at this location which they consider would result in an increase in dwelling density within a rural area endangering public safety due to the generation of additional traffic movements on a substandard rural road network. I would note that the appellant proposes to surface the road for the length of the site which would bring it up to a standard similar to that serving the two adjoining dwellings. I do not consider that the Roads Section have provided any material evidence to suggest that the proposal would endanger public safety and I consider that subject to the surfacing proposed that the proposal would be acceptable.

7.7. Appropriate Assessment

- 7.7.1. Having regard to the nature and scale of the proposed development, which is a small-scale residential development, outside of any Natura 2000 sites, I do not consider that any Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

Having regard to the foregoing I recommend that permission for the above described development be granted subject to the conditions outlined below.

9.0 Reasons and Considerations

- 9.1. Having regard to the nature and design of the proposed development, to the developer's compliance with the rural housing policy as set out in the South Dublin County Development Plan 2016-2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would be acceptable in terms of traffic safety and would not constitute a traffic hazard and would be

acceptable in terms of house design. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 23rd day of December, 2020 and as received by the Board with the appeal on 24th March 2021, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2 (a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.

(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.

Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to

meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. Prior to commencement of development the developer shall submit details of the proposed road surfacing to the Planning Authority. The works shall be completed prior to the occupation of the proposed dwelling.

Reason: In the interest of orderly development.

4. (a) Landscaping shall be carried out in accordance with the Landscape Plan submitted on 23rd December 2020.

(b) Planting shall commence no later than the first planting season following commencement of development on site. Any plants which die, are removed or become seriously damaged or diseased, within a period of five years from the completion of the development, shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: To protect the visual amenity and natural heritage of the area.

5. (a) The treatment plant and polishing filter shall be located, constructed and maintained in accordance with the details submitted to the planning authority on the 23rd day of December, 2020 and to An Bord Pleanála on 24th March 2021 and in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. < 10)" - Environmental Protection Agency, 2009. No system other than the type proposed in the submissions shall be installed unless agreed in writing with the planning authority.

(b) Certification by the system manufacturer that the system has been properly installed shall be submitted to the planning authority within four weeks of the installation of the system.

(c) A maintenance contract for the treatment system shall be entered into and paid in advance for a minimum period of five years from the first occupancy of the

dwellinghouse and thereafter shall be kept in place at all times. Signed and dated copies of the contract shall be submitted to, and

agreed in writing with, the planning authority within four weeks of the installation.

(d) Surface water soakways shall be located such that the drainage from the dwelling and paved areas of the site shall be diverted away from the location of the polishing filter.

(e) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the polishing filter is constructed in accordance with the standards set out in the Environmental Protection Agency document.

Reason: In the interest of public health.

6. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

Reason: In the interest of public health

7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

Una Crosse
Senior Planning Inspector

24 May 2021