



An
Bord
Pleanála

Inspector's Report

ABP-310366-21

Development	Construction of dwelling with a granny flat and a vehicular access.
Location	Killalane, Skerries, Co. Dublin,
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0126
Applicant(s)	John and Robert Leydon
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	John & Robert Leydon
Observer(s)	1) Michael & Catherine McDonnell 2) Sean and Helen Clinton 3) Colin and Bernie Clinton 4) Kay Howard and Others 5) John McDonnell 6) John Clinton and Helena Clark
Date of Site Inspection	3 rd of September 2021
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. The site, which has a stated area of 0.28ha, comprises an agricultural field located in the townland of Killalane, c.6kms west of Skerries. It is in the rural area and is accessed via a network of narrow local roads to the east of junction 5 of the M1. The subject site is located on the western side of a local road to the west of the R127.
- 1.2. There is a field gate to the road frontage at the south-eastern corner of the site. There is also a field gate from the rear garden area of the house to the south. The site is greenfield, appears relatively flat and is bounded by low hedges. There is a ditch along the northern site boundary. There is also an ESB pole midway along the road frontage of the site.
- 1.3. There are a number of one-off rural dwellings located along this stretch of the road, particularly on the western side. These are generally single storey/dormer type dwellings. The site appears as infill gap and is located between such dwellings. There are two houses immediately to the north and 3no. houses to the south. There are also 2no. houses on the opposite side of the road. The house opposite the subject site has a set-back hardstanding area. The area generally appears under pressure for one off housing.

2.0 Proposed Development

- 2.1. This proposal is for the construction of a dormer bungalow featuring a front 2 storey gable and a granny flat to the side at the rear and vehicular access with associated front landscaping on this site.
- 2.2. Drawings submitted include a Site Layout Plan, Floor Plans, Sections and Elevations.
- 2.3. A letter has been submitted by F.D Breitenstein, Architect providing a description of the proposed development.
- 2.4. Details have been submitted with the application relative to the applicant's local need.

3.0 Planning Authority Decision

3.1. Decision

On the 30th of April, 2021 Fingal County Council refused planning permission for the proposed development for 3no. reasons. These are in summary relative to:

- There is a lack of demonstrated local need - would contravene materially the rural settlement strategy in Fingal CDP 2012-2023 and be contrary to Ministerial Guidelines and National and Local Policy;
- The availability of sightlines has not been demonstrated and would endanger public safety by reason of traffic hazard and be contrary to planning objectives in the Fingal CDP;
- When taken together with existing development in the vicinity, would consolidate and contribute to the build up and coalescence of ribbon development in this open rural area and lead to demands for further provision of public services and be contrary to planning policy and Guidelines.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report had regard to the locational context of the site, planning history and policy, to the submissions made and to the inter departmental reports. Their Assessment included the following:

- Based on the information submitted, the applicants have not demonstrated that they meet the criteria in relation to their involvement in farming.
- They have not demonstrated compliance with rural local needs policies and objectives in the Fingal CDP 2017-2023.
- Having regard to the documents submitted the applicants have not demonstrated that they are a 'bona fide' applicant.
- The scale and design of the proposed dwelling is generally considered to be acceptable.

- In view of the set back of the proposed dwellings concerns need to be addressed regarding overlooking issues of adjacent properties.
- The proposed dwelling would be considered to constitute ribbon development and would therefore contravene objectives in the Fingal CDP.
- They note that a drawing showing sightlines has not been submitted and concerns about public safety and traffic hazard.
- Given the nature of the proposal, the distance to the closest Natura 2000 sites and the lack of hydrological link to same, the project is not likely to significantly affect the integrity of a European Site, either alone or in combination with other plans and projects.
- They recommend refusal as the proposal would not comply with planning policy and Guidelines relative to rural housing. It would be contrary to the proper planning and sustainable development of the area.

3.3. Other Technical Reports

Transportation Planning Section

They note that no sightline drawing has been submitted with this application. As maximum speed limits apply to this narrow rural county road, they have concerns about an additional entrance and that, appropriate sightlines can be achieved on either side of the proposed entrance. They consider that in the current format the proposed development would constitute a traffic hazard as the required sightlines cannot be achieved and recommend refusal. If it is decided to pursue planning permission, they recommend that F.I be submitted regarding these issues.

Water Services Department

They provide that according to FCC drainage records there is no foul network in the vicinity of the proposed development. They note that where an applicant proposed to install an on-site wwts or similar that a Site Characterisation Form and Site suitability assessment needs to be submitted in accordance with the EPA CoP for Wastewater Treatment and Disposal Systems for Single Dwellings (October 2009). They recommended that F.I be sought relative to further details on Foul and Surface Water drainage.

3.4. Prescribed Bodies

Irish Water

They note that a new water connection is required and have no objection subject to recommended conditions.

3.5. Third Party Observations

Submissions received from local residents, have been noted in the Planner's Report. Their concerns are noted as are the Observations made in this Assessment below.

It is also of note that some letters of support have been submitted with the application.

4.0 Planning History

The Planner's Report provides that there is no planning history relating to the subject site. The following is the more recent relative to proximate sites:

Proximate sites

- Reg.Ref. F06A/1585 – Permission granted to Colin Clinton for a dormer bungalow with biological sewerage unit and a combined enlarged road entrance to public road to serve proposed and existing family home. This relates to the dwelling on the opposite side of the road.
- Reg.Ref.F01A/0468 & F03A/0612 – Permission granted to Neil T Nugent for a dormer dwelling and garage and biocycle septic system and irrigation area and new road entrance. This relates to the dwelling to the south of the site.

5.0 Policy Context

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

Section 5.3 refers to the growth and development of rural areas and the role of the rural town as a catalyst for this. It is recognised that the Irish countryside is, and will continue to be, a living and lived-in landscape focusing on the requirements of rural economies and rural communities, based on agriculture, forestry, tourism and rural

enterprise, while at the same time avoiding ribbon and over-spill development from urban areas and protecting environmental qualities.

Objective 18 refers to the policy to support the proportionate growth of and appropriately designed development in rural towns and villages that will contribute to their regeneration and renewal, including interventions in the public realm, the provision of amenities, the acquisition of sites and the provision of services.

Objective 19 outlines that within areas under urban influence, single housing in the countryside will be facilitated based on the core consideration of a demonstrable economic or social need to live in the rural area. It further states that in rural areas elsewhere, it is an objective to 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.

Section 28 Guidelines

5.2. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

This seeks to encourage and support appropriate development at the most suitable locations. A distinction to be made between 'Urban Generated' and 'Rural Generated' housing need.

Section 3.2.3 concerns Rural Generated Housing and gives an example of Persons who are an intrinsic part of the rural community and Persons working fulltime or part-time in rural areas.

Section 3.3 is concerned that the consideration of individual sites will be subject to normal siting and design considerations. These include the following:

- Any proposed vehicular access would not endanger public safety by giving rise to a traffic hazard.
- That housing in un-serviced areas and any on site wastewater disposal systems are designed, located and maintained in a way, which protects water quality.

- The siting of the new dwelling integrates appropriately into its physical surroundings.
- The proposed site otherwise accords with the objectives of the development plan in general.

Section 4.4 is concerned with Access and restriction of such on National Primary and Secondary Roads. Regard is also had to Roadside Boundaries Section 4.5 is concerned with Protecting Water Quality and Site Suitability issues

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.

5.3. EPA Code of Practice for Domestic Wastewater Treatment Systems 2021

This Code of Practice (CoP) is published under Section 76 of the Environmental Protection Agency Act, 1992 (as amended).

Its purpose is to provide guidance on domestic waste water treatment systems (DWWTSs) for single houses or equivalent developments with a population equivalent (PE) of less than or equal to 10. It sets out a methodology for site assessment and selection, installation and maintenance of an appropriate DWWTS.

This CoP replaces the previous Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10) issued in 2009. This CoP applies to site assessments and subsequent installations carried out on or after 7th June 2021. It provides that the 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date.

5.4. EU Water Framework Directive

The purpose of the EU Water Framework Directive (WFD) 'is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater.

5.5. Fingal County Development Plan 2017-2023

Rural Housing – Settlement Strategy

Chapter 5 of the Fingal CDP relates to Rural Fingal and this includes regard to Settlement Strategy and issues of Design and Layout, etc.

This Development Plan defines ‘rural generated housing’ need as housing needs of people who have long standing existing and immediate family ties, or occupations which are functionally related to the rural areas of the County, and are specifically defined as

- members of farming families who are actively involved in the family farm which is located within rural Fingal as defined in Objective RF38.
- persons who have close family ties to the Fingal rural community as defined in Table RF03 paragraph (i).
- persons who have been in long term employment which is related to, and supportive of, the rural community as defined in Table RF03 paragraph (ii) and where the employment is dependent on the residence of the person within the rural community.
- persons who are a member of a rural-located family, who are considered because of exceptional and demonstrated health reasons to have a need to reside beside their family home in the rural area as defined in Table RF03 paragraph (iii).
- Persons who are 'a bona fide' applicant, as defined in Table RF03 paragraph (iv), and who have a demonstrated commitment to set up a rural-related business and who may not already live in the area, nor have family connections there, or be engaged in particular employment or business classified with the local needs criteria”.

Farming Families

Objective RF38 – This provides a list of criteria to 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. This includes the provision of documentary evidence. RF38(b) relates specifically to horticultural farms.

New Housing for the Rural Community Other than for those who are actively engaged in Farming

Objective RF39 of the Development Plan states that the Planning Authority will: “permit new rural dwellings in areas which have zoning objectives RU, or GB, on suitable sites where the applicant meets the criteria set out in Table RF03”. It also indicates that in cases for dwelling houses within the rural area that the applicant must have a clearly demonstrated need to live in the rural area relative to exceptional health circumstance, or to ensure the functioning of the business and it sets out that people who have a genuine rural-generated housing need will be considered for planning permission for a house in those parts of the open countryside which have zoning objective RU.

Objective PM50 of the Development Plan states that the Planning Authority will seek to: “ensure that new dwellings in the rural area are sensitively sited and designed and demonstrate consistency with the immediate Landscape Character Type and make best use of the natural landscape for a sustainable, carbon efficient and sensitive design”.

Ribbon Development

Objective 55 refers to the presumption against Ribbon Development:

“In areas which are subject to either the RU, GB, or HA zoning objective, presume against development which would contribute to or intensify existing ribbon development as defined by Sustainable Rural Housing, Guidelines for Planning Authorities, 2005. A relaxation may be considered where permission is sought on the grounds of meeting the housing needs of the owner of land which adjoins an existing house of a member of his/her immediate family where it is clearly demonstrated that no other suitable site is available”.

Road Safety

Objective DMS126 of the Development Plan states that the Planning Authority will seek to: “Restrict unnecessary new accesses directly off Regional Roads. Ensure premature obsolescence of all county/local roads does not occur by avoiding

excessive levels of individual entrances. Ensure that necessary new entrances are designed in accordance with DMRB or DMURS as appropriate thereby avoiding the creation of traffic hazards”.

Objective DMS129 seeks to: “Promote road safety measures in conjunction with the relevant stakeholders and avoid the creation of traffic hazards”.

Boundary Hedgerows

Objectives RF59 and RF63 refer to the protection of boundary hedgerows. The latter is of particular note:

Objective RF63: “Ensure the retention of hedgerows and other distinctive boundary treatments in rural areas. Where removal of a hedgerow, stone wall or other distinctive boundary treatment is unavoidable, provision of the same type of boundary/provision of agreed species of similar length will be required within the site”.

5.6. Natural Heritage Designations

The closest Natura 200 site – Skerries Island SPA is c. 5.2km to the east of the subject site.

5.7. 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 applicants John & Robert Leyden have submitted a First Party Appeal to the Council's reasons for refusal. Their Grounds of Appeal include the following:

Local Need

- They refer to the Council's Mission Statement and note that they are open to considering individual situations.
- They refer to the European Quality of Life Survey which includes reference to well being and social equality.
- They are concerned about the wellbeing of their mother and ask the Board to view the attachments regarding her health that have been submitted with the appeal. They enclose medical attachments.
- They note that she is a horticultural scientist and would benefit from garden activities. Ideally, they would like to grow organic vegetables for the local Skerries market.
- They have been unsuccessful in the past few years in finding a home for their mother and ask the Board for understanding with a grant of permission.

Sightlines

- They refer to amended plans submitted to show sightlines. This includes the removal of the existing roadside boundary hedge and a setback of the site frontage to allow for improved sightlines.

Public Services

- They have incorporated a domestic sewage treatment plant for sewage and grey water as an alternative to the public sewage drain.
- They would like to install a grey water and a rainwater harvesting system.
- They have also added solar panels to their proposed house design.
- They consider that their plans for this home would add to the local environment and locality.
- They have a strong belief in the preservation of the environment and in encouraging biodiversity.
- They ask the Board to consider their appeal in a positive light.

6.2. Planning Authority Response

They provide that they have no further comment in relation to this application and request that the Board upholds their decision to refuse permission.

In the event that this appeal is successful, provision should be made in the determination for applying a financial contribution in accordance with the Council's Section 48 Development Contribution Scheme.

6.3. Observations

These have been received from the following local residents:

- 1) Michael & Catherine McDonnell
- 2) Sean and Helen Clinton
- 3) Colin and Bernie Clinton
- 4) Kay Howard and Others
- 5) John McDonnell
- 6) John Clinton and Helena Clark

For convenience as they raise similar type issues of concern they are considered together under the following headings:

Local Need

- They have regard to the rural location and do not consider that the applicant has demonstrated genuine reasons as to why they should be granted permission to build on this rural site, in accordance with Local Plan Objectives.

Proposed Usage

- Concerns about the implications of possible use of the development for market gardening and as a commercial development.
- That this will impact adversely on their residential amenities and on traffic safety in the area.
- It will impact on noise, traffic and the peace and quiet of existing residences in this rural area.

Impact on the Character of the Area

- The scale of the proposed dwelling on this site is excessive. The design and layout will not be in character with other houses in the area.
- The proposed height will lead to overshadowing of existing properties on either side. This has the potential to impact on natural light to the adjoining properties.
- It has the potential to impact on privacy and cause overlooking to the rear of adjoining properties.
- If permitted the proposal will negatively change the structure of this rural area and the quality of the environment for local long-term residents.

Sightlines

- They submit that the new sightlines noted on the revised drawings will still endanger public safety by reason of traffic hazard.
- That the proposed horticultural business and the inherent increase in mixed vehicular traffic through the proposed access will add to congestion of the high volume road which contradicts objectives in the Fingal DP.

Drainage

- Possible nuisance with the proposed wwts, in view of the number of such systems in the area and the high water table.
- The proposed wwts is shown too close to neighbouring properties.

Encroachment

- The redline boundary is incorrectly drawn and is encroaching on neighbouring property. (Michael & Catherine McDonnell).
- They consider that the hedge and ditch which are approx. 8ft. wide in total belongs to their property. They enclose a sketch.

7.0 Assessment

7.1. Rural Settlement Strategy – Local Needs

- 7.1.1. The Settlement Strategy has regard to Rural Generated Housing Need. This is a matter of compliance with rural settlement strategy which requires consideration of not just local but also regional and national planning provisions that deal specifically with this matter. National Policy Objectives 18 and 19 of Project Ireland 2040, refer. As noted in the Policy Section above, Objective 18 seeks to develop a programme for new homes in small towns and villages. Objective 19 seeks that: “In rural areas under urban influence, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in the 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”.
- 7.1.2. The over-arching Rural Housing Objective in the Fingal Development Plan 2017-2023 – Objective SS07 seeks to: “Direct rural generated housing demand to villages and rural clusters in the first instance and to ensure that individual houses in the open countryside are only permitted where the applicant can demonstrate compliance with the criteria for rural housing set down by this Development Plan”. The site is located on lands zoned as “RU” where it is an objective “to protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage”.
- 7.1.3. Regard is also had to the Sustainable Rural Housing Development Guidelines 2005 where the strategy indicates that there should be a presumption against urban-generated one-off housing in rural areas adjacent to towns. The site is located in an area classified as being under “Strong Urban Influence” as identified in the Guidelines. Section 4.3 of the Guidelines refers to Assessing Housing Circumstances and includes: “In particular, planning authorities should recognise that exceptional health circumstances – supported by relevant documentation from a registered medical practitioner and a disability organisation – may require a person to live in a particular environment or close to family support”.
- 7.1.4. It is put forward that the applicant has a proven local need and there should not be a ban on genuine applicants in the area. Details of the Applicant’s local need have

been submitted with the planning application and the appeal. The applicants have stated that if permission is granted that they would plan to be involved in agricultural activities, such as growing organic vegetables and protected crops at the rear and varied orchards at the front of the site. Their mother is a horticultural scientist and garden activities would benefit her health. Ideally, they would like to grow organic vegetables for the local Skerries market. The site is now greenfield and stated the area of the site is c.0.28ha. The site area is limited and there is no other stated landholding in the area. They have not submitted a business plan or details/documentation as referred to in the criteria in Objective RF38 (b) 'For horticulture farms'. In addition, they have not submitted evidence that they have been involved in organic/horticulture. Therefore, I would not consider that this Objective would be complied with.

- 7.1.5. I would consider Objective RF39 to be more applicable in that it refers to 'New Housing for The Rural Community Other than for Those Who Are Actively Engaged in Farming' and seeks to: "Permit new rural dwellings in areas which have zoning objectives RU, or GB, on suitable sites where the applicant meets the criteria set out in Table RF03". It is however, noted that the applicants do not appear to have rural family links to the area, nor is there an adjacent family home in the area. The First Party Appeal submits that living in a rural environment would be beneficial for the health of the applicant's mother. Health issues concerning their mother have been documented in the details submitted, including letters from medical practitioners with the planning application and appeal. However, neither the applicants nor their mother have submitted documentation relative to residence in this rural area and it is considered that they do not establish a specific need in accordance with Objective RF39 to reside on this site.
- 7.1.6. Regard is also had to consideration under Objective RF39 (iv) as: "A bona fide' applicant who may not already live in the area, nor have family connections there or be engaged in particular employment or business classified with the local needs criteria, subject to the following considerations....."
- 7.1.7. However, it is noted that they have not submitted a Business Plan as to how the business will contribute to and enhance the rural community, or to demonstrate their long-term commitment to operate a full-time business from their proposed home in a rural area. Criteria also include: "Applicants whose business is not location-

dependant will not be considered". There is no evidence to show that the applicants have to reside on this particular site to carry out a horticultural business. Also, a sworn affidavit by the applicant stating that the applicant conforms to the requirement of this objective has not been submitted.

- 7.1.8. Having regard to these issues and to the lack of documentation submitted, it is not considered that a site specific rural housing need has been established. It is considered that this proposal would be contrary to rural settlement Objectives SS07 and RF 39 of the Fingal CDP 2017-2023, to the Ministerial Guidelines and to the National Planning Framework.

7.2. Material Contravention

- 7.2.1. Regard is had to the Council's first reason for refusal which includes that the proposed development would contravene materially the rural settlement strategy of the Fingal Development Plan 2017-2023 including Objectives RF38 and RF39.
- 7.2.2. Section 34(6) of the Planning and Development Act 2000 sets out the procedure under which a planning authority may decide to grant permission for a development which they are concerned would contravene materially the development plan or local area plan. Section 37(2) of the 2000 Act provides the constrained circumstances in which the Board may grant permission for a material contravention. These include whether the development is of strategic or national importance, where the development should have been granted having regard to regional planning guidelines and policy for the area etc., where there are conflicting objectives in the Development Plan or they are not clearly stated, or permission should be granted having regard to the pattern of development and permissions granted in the area since the making of the Plan.
- 7.2.3. In this instance the proposed development is clearly not of strategic or national importance. I would not consider that there are conflicting objectives in the Development Plan. However, the proposal would not be in character with the pattern of development in the area, since the making of the said Plan. This is because the one-off housing in the vicinity was granted prior to the making of the current Plan. Therefore, in this respect, I would consider that the proposal would not comply with

Objectives RF38 and RF39, and that it could be said that the issue of material contravention of the rural housing settlement policies occurs.

7.3. Design and Layout

- 7.3.1. This proposal is for the construction of a dormer bungalow to includes a granny flat to the side at the rear on this site of 0.28ha. The Site Layout Plan shows that the proposed dwelling is to be well set back c.32m from the road frontage and c. midway on site. A vehicular entrance is proposed to the north-eastern side at the road frontage. It was originally proposed to connect to existing services.
- 7.3.2. The g.f.a of the proposed dwelling is 235sq.m, to include granny flat and dormer accommodation. As shown on the floor plans the dwelling is to be 175sq.m and the granny flat which while it has separate entrance is shown connected by an internal door to the main dwelling is to be 60sq.m. The main dwelling is to have 3no. bedrooms, visitor's bedroom and living accommodation at ground floor level and 2no. bedrooms, playroom/study/gym at dormer level. The self-contained granny flat is to have one bedroom and separate living accommodation. Therefore, the proposed dwelling is to have 7no. bedrooms in total.
- 7.3.3. It is noted that Objective DMS43 of the Fingal CDP provides that granny flats should be for family accommodation with a demonstrated need, are linked by external access door and do not have a separate front door, do not exceed 60sq.m in floor area. It is recommended that if the Board decide to permit that a condition be included to ensure that the granny flat will be considered as part of the family unit, rather than as separate accommodation.
- 7.3.4. The proposed dwelling is shown with a pitched roof 7m in height. External finishes include white render finish, coloured metal clad dormer and shaded finish rendered or clad wall under. Solar panels are also shown included. It is recommended if the Board decide to permit that a condition regarding external finishes be included.
- 7.3.5. It is noted that some of the Observations made by local residents consider that the scale of the proposed dwelling is excessive relative to the subject site. There is concern that in view of the set-back that it will lead to overlooking, overshadowing and loss of privacy for the dwellings on either side. It is noted that these are sited much closer to the public road. The proposed house is set further back partly in view

of the shape of the site which has narrower road frontage and then widens. The separation distance is shown in excess of 22m from the rear of the single storey dwellings on either side. While it will be set back further than the building line, I would not consider that the siting of the proposed dwelling would adversely affect these properties. I would consider that the scale of the proposed dwelling with 7no. bedrooms will be more substantial than that of the other one-off dwellings in the immediate environment.

- 7.3.6. There are low hedgerows along the site boundaries. It is recommended that if the Board decides to permit that it be conditioned that a landscaping plan be submitted to include boundary planting of native species to provide screening.

7.4. Ownership/Boundary issues

- 7.4.1. An Observation has been submitted from the neighbouring dwelling to the north of the subject site. In their view the red line boundary demarking the applicant's property is incorrectly drawn and is encroaching on their property. They provide that the hedge and ditch which are approx. 8-feet wide in total belong to their property and attach a sketch in this regard.
- 7.4.2. The issue of encroachment is a civil matter, and the applicant is advised that in the event of encroachment or any dispute regarding easements concerning the adjoining property, the consent of the adjoining property owner is required. It is of note that the issue of ownership is a civil matter and I do not propose to adjudicate on this issue. I note here the provisions of s.34(13) of the Planning and Development Act: "*A person shall not be entitled solely by reason of a permission under this section to carry out any development*". Under Chapter 5.13 'Issues relating to title of land' of the 'Development Management - Guidelines for Planning Authorities' (DoECLG June 2007) it states, inter alia, the following: "*The planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution in the Courts...*" In other words, the developer must be certain under civil law that he/she has all the rights in the land to execute the grant of permission.

7.5. Access and Traffic

- 7.5.1. The proposed development is located with access from the local road network and is in an 80km/hr speed limit zone. Currently there is a field gate to access this site, which is located at the southern end of the site frontage. It is proposed to provide a recessed vehicular access towards the northern end of the road frontage.
- 7.5.2. It is noted that the Council's Transportation Planning Section had concerns that a drawing showing sightlines has not been submitted. They provide that the design speed of the road at this location is 80km/hr, requiring sightlines of 145m visibility either side of the proposed entrance from a 2.4m setback from the edge of the road to the nearside edge of the road in accordance with current standards. That the proposed building of an additional dwelling would be considered intensification with regard to the road system and the required sightlines must be achieved. They note concerns about sightlines and that these would be improved if the existing roadside hedge was removed and a new hedge replanted with its front face an offset of at least 3m from the edge of the road. They also considered that a speed survey may be beneficial as they noted that traffic travels at speed down this stretch of road and this in combination with the limited sightlines available due to third party hedges and boundary walls may make the required sightlines unachievable. They recommended refusal as the current format of the proposed development would constitute a traffic hazard as the required sightlines cannot be achieved.
- 7.5.3. In the event of permission being pursued they recommended that further information be sought to indicate sightlines that are achievable, that a speed survey be conducted, that the redline boundary be amended to incorporate all of the works area including works that have to be carried out on third party lands to achieve the necessary sightlines and that written permission from landowners to carry out these works be submitted.
- 7.5.4. It is noted that the Council's second reason for refusal concerned that the applicant had not demonstrated the availability of adequate sightlines from the proposed vehicular entrance. That the proposal would endanger public safety by reason of traffic hazard and would be contrary to Objective DMS129 which seeks to avoid the creation of traffic hazard.

- 7.5.5. In response, the First Party provide that they have amended the plan by bringing a road surface 6m from the road edge, into the garden, removing the existing hedge (to be replaced at 6m back with native hedge). They provide that this improves visibility and sightlines. That the hard surface of 6m enables incoming traffic to the proposed dwelling to safely pull in off the road and they submit that this amendment to the original plans will satisfy safety considerations. A revised Site Layout Plan has been submitted showing these modifications to include the hardstanding and set back. They also show the proposed entrance alternatively towards the southern part of the road frontage.
- 7.5.6. However, I would have concerns that the applicant has not shown that adequate sightlines in accordance with the Council's Transportation Section's requirements and standards can be achieved. I note that the red line boundary has not been extended to show sightlines and that letters of consent from adjoining landowners have not been submitted. It is also noted that the Observers are concerned that there will be additional comings and goings due to the proposed horticultural activities that may take place. Details have not been submitted as to a Business Plan or as to whether this will be a commercial enterprise.
- 7.5.7. I would be concerned that this proposal will add to the number of vehicular entrances in the vicinity and not be conducive to road safety, therefore that it would not be in accordance with Objectives DMS126 and DMS129 of the Fingal CDP 2017-2023. Attention is also drawn to Objectives RF59 and RF63 which address the retention of hedgerows in new development. In addition, the cumulative impact of this proposal along with the setback for the dwelling on the opposite side of the road, would not add to the attractiveness of the rural area.

7.6. Drainage Issues

- 7.6.1. As per the application form and as shown on the Site Layout Plan, it was initially proposed to connect to the public mains and public sewer. However, the Council's Water Services Department provides that according to FCC drainage records, there is no foul network in the vicinity of the proposed development. They advise that the applicant will, need to install an on-site waste water treatment system to take foul discharge from the proposed dwelling. To ensure the protection of the groundwater,

when an applicant proposed to install a wwts or similar, they are required to submit a Site Characterisation Form and Site Suitability Assessment carried out in accordance with the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Dwellings (October 2009). That the on-site treatment plant must be in accordance with the requirements therein.

- 7.6.2. As noted in the Policy Section above this CoP document has now been replaced by the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Dwellings (2021). This includes: *The 2009 CoP may continue to be used for site assessments and subsequent installations commenced before 7th June 2021 or where planning permission has been applied for before that date.* It is noted that this application was made to the Council on the 8th of March 2021, so therefore the 2009 CoP still applies.
- 7.6.3. The First Party response provides that to counteract the Council's third reason for refusal, they have incorporated a domestic sewerage plant for sewage and grey water, as an alternative to the existing public sewage drain. They would also like to install a grey water and a rainwater harvesting system, which they will apply for if they are granted permission. Their revised Site Layout Plan, submitted with the appeal, indicates the location for the proposed domestic sewage plant, close to the site frontage. While connection to the foul drainage system is indicated a percolation area is not shown. Adequate details have not been submitted.
- 7.6.4. I would consider that the information requested in the Water Services Department Additional Information request has not been addressed in the First Party Response. In particular a Site Characterisation Form, a Site Suitability Assessment or details of the proposed wwts and percolation area have not been submitted. Therefore, it has not been ascertained that the site is suitable for the disposal of effluent. The proposal would not comply with Objective RF66 of the Fingal CDP i.e: "Ensure that the requirements set out for on-site treatment are strictly complied with, or with the requirements as may be amended by future national legislation, guidance, or Code of Practice".

7.7. Impact on the Character and Amenities of the Area

- 7.7.1. The Council's third reason for refusal is concerned that taken in conjunction with existing development in the vicinity of the site, the proposal would contribute to the build-up and coalescence of ribbon development in the area. Also, that it would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. The First Party considers that having regard to their proposal and to the revisions to the plans that their proposed home would add to the local environment and locality.
- 7.7.2. As noted above the proposal is not on a serviced site and it has not been demonstrated that the site is suitable for the disposal of effluent. Also, the location of neighbouring wwts has not been shown. It would involve the creation of a new entrance which would militate against road safety in an area where there is a proliferation of entrances and where sightlines are inadequate.
- 7.7.3. The issue of ribbon development had been referred to in the Council's reason for refusal. Appendix 4 of the 'Sustainable Rural Housing Guidelines' 2005, recommends against the creation/exacerbation of ribbon development for a variety of reasons relating to road safety, future demands for the provision of public infrastructure as well as visual impacts. An example is given of where 5 or more houses exist on any one side of a given 250m of road frontage. In this case the addition of this proposal, albeit on an infill site, taken in conjunction with existing housing would exceed this, in an area that is under pressure for development.
- 7.7.4. The proposal would therefore be contrary to Objective RF55 of the Fingal DP which has a presumption against ribbon development as defined by the 'Sustainable Rural Housing Guidelines for Planning Authorities', 2005.

7.8. Screening for Appropriate Assessment

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

8.0 Recommendation

8.1. I recommend that this proposal be refused for the reasons and considerations below.

9.0 Reasons and Considerations

1. Having regard to the location of the site within an area under strong urban influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, wherein it is policy to distinguish between urban-generated and rural generated housing need, and having regard to National Policy Objective 19 of the National Planning Framework (February 2018), which for rural areas under urban influence, seeks to facilitate the provision of single houses in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area, and having regard to the location of the site in an area where housing is restricted to persons demonstrating need in accordance with Objective RF39 and Table FR03 of the Fingal Development Plan 2017-2023 , it is considered that the applicants have not demonstrated that they come within the scope of the housing need criteria. Furthermore, the Board is not satisfied that the applicant’s housing needs could not be satisfactorily met in an established smaller town or village/settlement centre. It is not considered that the proposal comes within the scope of the housing need criteria as set out in the National Planning Policy, the Guidelines or the Development Plan for a house at this location. Having regard to the lack of demonstrated local need the proposed would be contrary to Objective RF39 Fingal 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 provisions of public services and infrastructure. The proposed development, would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The proposed development would add to a proliferation of vehicular entrances onto this county road which is substandard in terms of width and alignment and would endanger public safety by reason of traffic hazard. Furthermore, it is considered that the proposal will involve the removal of a significant part of the roadside boundary hedgerow to gain access to the site and to achieve the sightlines which would have a detrimental effect on the rural character of the area and would be contrary to Objectives DMS126, DMS129 and RF59 and RF63 of the current Fingal County Development Plan 2017-2023. The proposed development would, therefore, be contrary to the proper planning and development of the area.
3. It is provided that there is no foul network in the vicinity of the proposed development. It is considered that inadequate information has been submitted to the Board relative to proposals for a proprietary waste-water treatment system and to indicate that the site is suitable for the disposal of effluent. The proposed development would therefore be prejudicial to public health. This would be contrary to Objective RF66 of the Fingal Development Plan 2017-2023. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

15th of September 2021