



An
Bord
Pleanála

Inspector's Report ABP-310594-21

Development	Demolition of existing house and construction of new 2 storey house
Location	Ballyhack, Kilsallaghan, Co Dublin K67WC79, and Heathwood Farm, Kilcoskan, Kilsallaghan, Co Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F21A/0184
Applicant(s)	Nora O'Gara Flynn
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Nora O'Gara Flynn
Observer(s)	None
Date of Site Inspection	12 th of October 2021
Inspector	Angela Brereton

1.0 Site Location and Description

- 1.1. This application concerns two separate sites. The existing two-storey detached dwelling 'Ballyhack Farm' is proposed for demolition. This is a vernacular cottage that has been extended. It has two separate entrances and is located on the eastern side of the St. Margaret's to Kilsallaghan, R122 Regional Road and is within a row of one-off houses to the south of the junction with the L7210. A plant hire business adjoins the existing subject dwelling 'Ballyhack Farm' to the south and east (rear).
- 1.2. The separate site for the proposed development is located to the west of the L7210 and is accessed via a gated entrance to the public road that also serves the farmyard. This is a backland greenfield site and is to be taken off the agricultural holding. Heathfield farmyard contains existing stables, stone outbuildings, a concrete tower used as a grain store, barns and sheds. The older farm buildings closer to the public road do not appear to be in use.
- 1.3. Surrounding residential development is characterised by rural detached dwellings. Heathwood House and Kilcoskan House are located south of the proposed dwelling site. Castlefarm rural cluster is located to the north. Corrstown House and golf club are located to the south. The River Ward is located to the south and the Broadmeadow River is located to the north. The existing site has a stated area of 0.56ha. The proposed site has a stated area of 1.16ha.

2.0 Proposed Development

- 2.1. Permission is sought for the following:
 - The demolition of the existing house located at Ballyhack, Kilsallaghan, Co. Dublin (as previously agreed under Reg.Ref. F14A/0214);
 - The construction of a new 2 storey, 4no. bedroom replacement dwelling, detached garage, entrance gates and wing walls (to replace farmgate entrance off the L7210), new wastewater treatment system and all associated site works, landscaping and drainage to facilitate the development at Heathwood Farm, Kilcoskan, Kilsallaghan.
- 2.2. Details submitted with this application include the following:

- Planning Statement – CWPA Planning & Architecture
- Visual Impact Study – Mark G Kelly Architects
- Cultural Heritage Impact Assessment – William Anderson
- Landscape Rationale - Ronan Mac Diarmada & Associates, Landscape Architects & Consultants
- Site Characterisation Report (EPA 2009 CoP)
- Drawings including Site Layout Plan, Floor Plans, Sections and Elevations

3.0 Planning Authority Decision

3.1. Decision

On the 24th of May ,2021 Fingal County Council refused permission for the proposed development for the following reasons:

1. The subject site is located within the 'RU' zoning objective under the Fingal Development Plan 2017-2023, the objective of which is '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'. Residential development is only permitted on suitable sites where the applicant has established a genuine need to live in the rural area, subject to specific criteria as expressed in the Fingal DP 2017-2023. No documentation has been submitted with the application in order to satisfactorily demonstrate the applicant's eligibility to construct a dwelling in the rural area of Fingal which is contrary to Objectives RF38 and RF39 in the Fingal DP. In addition, the applicant is already the owner of an existing habitable property in the rural area therefore a genuine need for a house to be constructed on a separate site in the rural area has not been demonstrated. The proposed development would therefore materially contravene the rural settlement strategy of the Fingal DP and would be contrary to the proper planning and development of the area.
2. The demolition of the existing habitable house 'Ballyhack Farm' would create a vacant site at this location fronting onto the R122 would result in the loss of

vernacular heritage would contravene materially Objectives CH37, RF28, RF64 & RF65 of the Fingal DP. The demolition of this existing house would set an undesirable precedent for other similar developments, which would in themselves and cumulatively, diminish the existing housing stock and be harmful to the amenities and character of the rural area. The proposed would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

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

- They consider that the retention, renovation and extension of the existing dwelling of *Ballyhock Farm* would be preferable to demolition.
- The proposed loss of vernacular heritage would be contrary to Objectives CH37, RF28, RF64 and RF65 of the Fingal DP 2017-2023.
- They note the planning history, and that permission was granted for the demolition and replacement of this dwelling – F14A/0214.
- The demolition of a house on an existing developed site and the construction of a house on a greenfield site would not comply with the aim of RU zoning to protect the rural landscape character.
- The proposed dwelling would negatively affect the character of the rural area.
- Given the nature and scale of the development and the distance from the subject site to the nearest Natura 2000 site a Stage 2 Appropriate Assessment is not required.
- They conclude that no documentation has been submitted with the application to satisfactorily demonstrate the applicant's eligibility to construct a dwelling in rural Fingal which is not acceptable to the Planning Authority.

- The applicant already owns an existing property in the rural area therefore a genuine need to demolish an existing habitable house and to construct a new house on a separate site in the rural area has not been demonstrated.
- The demolition of an existing habitable dwelling on a site of considerable character would result in a vacant site at this location beside an existing business which would be undesirable.
- This proposal would be contrary to proper planning and sustainable development and set an undesirable precedent.

3.3. Other Technical Reports

Planning and Strategic Infrastructure

They note that the proposed development is c.100m from the site of Kilcoskan House identified on the historic maps. A review of the historic maps shows the proposed site to be located within agricultural land. As such there are no objections to this development on archaeological grounds.

Parks and Green Infrastructure

They recommend a condition that the submitted Landscape Plan be implemented.

Water Services Department

They have no objections subject to conditions.

Transportation Planning Section

They note that the applicant proposed to use the existing access and have no objections subject to conditions.

3.4. Prescribed Bodies

Irish Water

They have no objections subject to conditions.

Department of Tourism, Sport, Culture, Arts, Gaeltacht, Sports and Media

They recommend a condition relative to archaeological monitoring be included.

3.5. Third Party Observations

The Planner's Report notes that there were none received.

4.0 Planning History

The Planner's Report notes the relevant Planning History. This includes the following:

- F14A/0214/E1: Extension of Duration of Permission Granted to the applicant Nora O'Gara Flynn 14th of January 2025.
- F14A/0214: Permission granted to Nora O'Gara Flynn for Demolition of an existing two storey dwelling and the construction of a re-oriented replacement two storey dwelling, single storey garage, installation of a replacement waste water treatment unit with percolation area, associated site development works and accessed via the existing domestic vehicular entrance. This development has not been constructed.

Copies of these decisions are included in the History Appendix of this Report.

5.0 Policy Context

5.1. National Policy

Project Ireland 2040, National Planning Framework (NPF) 2018

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.

5.2. Section 28 Guidelines

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. This includes reference to people who have lived most of their lives in rural areas and are building their first homes.

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 4.3 refers to Assessing Housing Circumstances. 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 Development Plan 2017-2023

The proposed development is located in an area designated with the Zoning Objective 'RU' Rural 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.*' Residential development is '*Permitted in Principle*' under Zoning Objective 'RU' subject to compliance with the Rural 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 of a working farm (a) for livestock (including equestrian), tillage and mixed livestock/tillage farms, (b) for horticulture farms, (c) Size thresholds for farms (minimum 15ha).

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”.

Housing in the Countryside and Built Heritage

Objective FR28 seeks to: “Encourage the re-use and adaption of the existing rural residential building stock and other building types, where practical, in preference to new build.”

Objective CH37 – “Seek the retention, appreciation and appropriate revitalisation of the historic building stock and vernacular heritage of Fingal in both the towns and rural areas of the County by deterring the replacement of good quality older buildings with modern structures and by protecting (through the use of Architectural Conservation Areas and the Record of Public Structures and in the normal course of Development Management) these buildings where they contribute to the character of an area or town and/or where they are rare examples of a structure type”.

Objective FR64 – “Retain, appreciate and revitalise appropriately the vernacular buildings of Fingal by deterring the replacement of good quality vernacular buildings with modern structures and by protecting and promoting the sympathetic maintenance, adaptation and re-use of vernacular buildings where they contribute to the character of the rural area”.

Objective FR65 – “Encourage the sensitive restoration and/or conversion of vernacular rural buildings and discourage their demolition or replacement.”

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 subject sites are located approximately 7.5km from the Malahide Estuary SAC (site code; 000205) and Broadmeadow Swords Estuary SPA (site code: 004025).

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

CWPA Planning & Architecture have submitted an appeal on behalf of the First Party. Their Grounds of Appeal include the following:

Reason for Refusal no.1

- They seek to demonstrate the development's compliance with national, regional and local planning objectives.
- The applicant already runs a successful business from the neighbouring site adjacent to the subject site and has the benefit of a current permission under Reg.Ref. F14A/0214.
- The applicant has already previously complied with the Fingal Rural Housing Strategy as set out in the CDP and are not seeking a new permission rather a revision to the extant permission whereby the location of the replacement dwelling would be changed.
- They contend that the policy objectives referred to in the Council's first reason for refusal have been improperly applied.
- There is overwhelming evidence that demonstrates the social and economic necessity for the applicant to reside in the rural area.

Reason for Refusal no.2

- They consider this is also contradictory as it conflicts with the previous decision of the Council to permit the demolition of the existing dwelling and facilitate a new build.
- This is despite the existence of conditions to demolish the existing dwelling, which complies with the sustainable planning and development of the area in the extant permission.
- Clearly the existing dwelling is not deemed to be of any vernacular merit, as demolition has been permitted on two occasions by the Council. They submit that it is substandard and not fit for residential use.

- Nor would the demolition of the building ‘*create a vacant site at this location fronting onto the R122*’, such is the boundary screening.
- The applicant would agree to retaining the existing building, although not of any residential merit, if the replacement dwelling is permitted as proposed in the application submitted.
- The applicant would invite a condition whereby the existing building could be adapted and converted to commercial office use ancillary to their business on the adjacent site.
- The building could be retained as per the planning officer’s wishes and would also facilitate the construction of the new dwelling as proposed.
- They include photographic evidence to demonstrate that the screen planting that limits the view of the subject site.
- The applicant agrees that the site will not be left vacant, and that a planning condition could be inserted to have the subject building converted to commercial office space ancillary to the family business adjacent to the subject site, which would following the Council’s policy objectives.

National Planning Framework

- They have regard to Objective NPO19 (rural housing).
- The applicant has and runs an established business in the vicinity of the existing dwelling and 600m from the site where the newly constructed dwelling is proposed.
- Details are given of this business and it is noted that it employs approx. 90 people in the rural area of Ballyhack. They submit documents confirming the applicant’s ownership of the land that the business is located at.
- They refer to an extract from the NPF that they submit supports the development proposal. They consider that this supports the Flynn family in their rural area and sustains the established links whereby their business is rurally located, and their two children are established in local rural schools.

Conclusion

- The applicant is established in the rural area within which the development proposal arises and is the owner of a long-established business located adjacent to the site of the existing dwelling.
- The planning officer has not taken these issues into consideration as they were not afforded the opportunity during application stage.
- They ask that all the information provided and appended with their appeal be taken into account in the Board's consideration of this proposal.
- They submit that the applicant is a bone fide proposer for the development of this essential home. The current dwelling is substandard and not fit for residential use (as per the appended reports).
- The applicant has agreed to and would invite a condition of planning that retains the existing building and converts it to commercial office usage to be absorbed into the business immediately adjacent to it.
- They consider that would satisfy the planning officer in their endeavours to retain the building in its current format, whilst providing a new dwelling on the proposed site a mere 600m away.
- They include Appendices in support of their local need and showing photographs. Appendix 4 provides an Existing Dwelling Condition Survey Report.

6.2. Planning Authority Response

They provide that they have no further comment to make in relation to this appeal.

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

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 3.2.3 refers to Rural Generated Housing. This includes reference to “people who have lived most of their lives in rural areas and are building their first homes”. Section 4.3 of the Guidelines refers to Assessing Housing Circumstances.
- 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. They note that the Council’s first reason for refusal includes that the proposal would be contrary to Objectives RF38 (members of farming families who are actively involved in the family farm which is located in rural

Fingal) and provide that at no time did the applicants indicate that they were applying under this objective. They refer to Objective RF39 i.e. in summary: "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". They provide that Table RF03 is irrelevant in this instance. This refers to and sets the criteria relevant to Rural Generated Housing Need.

- 7.1.5. The First Party provide that the Applicant already runs a successful business from the neighbouring site. This is adjacent to the subject site which already has the benefit of a current permission permitted under Reg.Ref. F14A/0214/E1. As noted in the Planning History Section above this relates to the demolition of their existing two storey dwelling and the construction of a re-orientated replacement two storey dwelling, single storey garage, installation of a replacement wastewater treatment unit with percolation area, associated site development works and accessed via existing domestic entrance. This permission for a replacement house on the site of the applicant's existing house was extended by the Council to expire on the 14th of January 2025. This site at 'Ballyhack' Kilsallaghan is c. 600m from the site proposed in the current application.
- 7.1.6. The First Party submit that having regard to the extant permission, the applicant had already previously complied with the Fingal Rural Housing Strategy as set out the Fingal DP 2017-2023. They provide that they are not seeking a new permission but merely seeking a revision to the extant permission whereby the location of the replacement dwelling would be changed. They therefore contend that the policy objectives quoted by the planning officer were incorrectly applied in this instance. They consider that the Council's first reason for refusal is flawed and not of relevance in this case due to the extant permission, where they have already been granted permission to construct a replacement house on the site of their existing house.
- 7.1.7. They quote from National Policy Objective 19 of the National Planning Framework relative to a more flexible approach, primarily based on siting and design, in areas that are not subject to urban development pressures. They submit that this narrative supports the Flynn family in their rural area and sustains the established links whereby their business is rurally located, and their two children are established in local rural schools. Details submitted include that the applicant and her husband are

the owner/Directors of Breffni Asset Holdings Ltd and that the business employs approx. 90 people located in the rural area of Ballyhack.

- 7.1.8. The Planning Statement submitted submits that the proposal would be in compliance with Section 3.2.2 of the 'Sustainable Rural Housing Guidelines' 2005. This relates to 'Holiday and Second Home Development'. It is noted that this puts an emphasis of a preference towards the clustering of appropriately scaled holiday home development in adjoining small towns and villages. This also refers to areas experiencing a significant demand for holiday and second home development, where development plans might include objectives and policies to support such. This would include proposals to reinstate, conserve and or replace existing ruinous or disused dwellings, and to small-scale enterprises such as the renovation of barns, or other existing structures or the construction of one or two holiday homes for rental associated with an existing permanent residence.
- 7.1.9. It is stated that this replacement dwelling constitutes a high quality architectural design and provides for a rural dwelling in keeping with the natural landscape of the subject site. They also refer to the Visual Impact Statement included. However, I would note that in this case, this proposal is not presented as a holiday home, it is not replacing a ruinous building or disused dwelling and is located on a separate greenfield site away from that of the existing habitable dwelling. I would not consider that section 3.2.2 of the said Guidelines would be applicable to the subject site.
- 7.1.10. As has been noted above the site is located in an area under strong urban influence. In this case, having regard to the documentation submitted I would not consider that the applicant has justified as to why they need to relocate from their existing site to the proposed site. Also, this would not be in accordance with local needs policy in that the applicant already owns a house in the rural area c. 600m from the proposed site and has an extant permission to build a replacement house on that site. The issue of precedent has also been raised. In general, as noted in 'The Sustainable Rural Housing Guidelines (Section 3.2.3) rural generated housing is based on the concept that it is for people who have lived most of their lives in rural areas and are building their first home. I would also consider that the proposal would not be in accordance with Objective RF39 of the Fingal DP 2017-2023. i.e. 'New Housing for the Rural Community other than for those who are actively engaged in farming'.

7.2. Demolition of existing House and Material Contravention

- 7.2.1. The Council's second reason for refusal is concerned with the demolition of the existing habitable house 'Ballyhack Farm'. They are concerned that it would result in the loss of vernacular heritage and would materially contravene Objectives CH37, RF28, RF64 and RF65 of the Fingal DP 2017-2023. As noted in the Policy Section above, these concern the retention of rural and vernacular heritage.
- 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, I would consider that regard needs to be had to the pattern of development in the area. The Planning History refers to the extant permission Reg.Ref. F14A/0214/E1, whereby as has been noted, permission has already been granted for the demolition of the existing house. Therefore, it would appear that the principle of a replacement house on the site of the applicant's current home, which is a previously extended vernacular cottage, has been previously accepted by the Council. In this case I would consider that the issue of material contravention would not occur and that the Council's second reason for refusal is not applicable.
- 7.2.4. Floor Plans and Elevations of the existing dwelling proposed for demolition have been submitted. The application form provides that the floor area of the existing house at 'Ballyhack Farm' is 198.65sq.m. It is noted that the First Party response includes an 'Existing Dwelling Condition Survey' by Cronin & Sutton, to show that the

existing extended cottage is in poor repair/structural condition and they provide of no special value. They submit that the possible refurbishment to the current building regulations standards would be prohibitive and the dwelling upon restoration would not be able to be certified from a building regulations or structural perspective given the load pattern and the foundations uncovered. It is noted that Building Regulations Standards are dealt with under separate remit. In addition, the house is currently habitable in that it is in use as the residence by the applicants.

7.2.5. The First Party contend that clearly the existing dwelling is not deemed to be of any vernacular merit, as demolition has been permitted on two occasions by the planning section of the Council. However, they provide that the applicant would agree to retaining the existing building if the replacement dwelling is permitted as proposed in the planning application. They would invite a condition from the Board whereby the existing building could be adapted and converted to commercial office use ancillary to the applicant's business on the adjacent site, meaning the building could be retained as per the planning officer's wishes, and would also facilitate the construction of the new dwelling as now proposed. They consider this would be to the satisfaction of both the planning officer and the applicant.

7.2.6. It is noted that a change of use from residential to commercial/office use is a separate matter and would require planning permission. It is not the subject of the current application or as described on the public notices. Therefore, it would not be appropriate to condition this as part of the current application.

7.3. Design and Layout

7.3.1. The site (stated area 1.166 ha) is on the western side of the county road (L7210). As shown on the Site Location Map, it is a backland site, to the rear of an existing house and agricultural shed that are not part of the greater landholding shown in blue. As noted in the Planning Statement submitted with the application the stated area of the landholding in the ownership of the applicant is c. 4.8 ha. It is proposed to share the existing gated access to the farmyard buildings that are shown within the southern part of the landholding. These do not appear to be in use. Details relative to the agricultural holding have not been given. Access to the site is via an internal access lane within the landholding.

- 7.3.2. The Site Layout shows that the proposed house (stated gross floor area 378.8sq.m) and shed/carport are to be sited on the north eastern part of the site. The details given provide that the ground floor area is to be 246.8sq.m and the first floor 129sq.m. Living accommodation and one bedroom are to be provided at ground floor level and 3no. bedrooms at first floor level. The proposed two storey dwelling provides for a maximum ridge height of 8.9m. As shown on the elevations the proposed design includes varying roof levels and pitches, to break up the overall massing of the structure. Details of a variety of external finishes are given. If the Board decides to permit, I would recommend that a condition regarding details of external finishes to be submitted.
- 7.3.3. Reference is had to the Qualitative Standards. It is noted that the proposed floor space/room sizes exceed that of the minimum standards provided in Objective DMS24 and Tables 12.1 and 12.3 (houses) in the Fingal DP 2017-2023. It is provided that the open space provision is 9,000sq.m and carparking is to be provided for 3no. cars. Additional parking can be accommodated when needed on site. It is noted that minimum open space provision as per Objective DMS87 of the said plan is 75sq.m for a house with 4 bedrooms or more, so the standards are well exceeded.
- 7.3.4. It is proposed to have a separate carport/shed sited to the north of the proposed dwelling house. This is to be 76sq.m. This is to have a flat roof in part shown c.3.4m and a ridge height of c.6m. The proposed design is to reflect that of the dwelling house. Aerial views have also been submitted to show views of the proposed house and carport.

7.4. Impact on the Character and Amenities of the Area

- 7.4.1. The Planning Report submitted provides that the proposed replacement dwelling is smaller than the replacement unit granted under Reg.Ref. F14A/0214 (Ballyhack Farm site). Permission has been granted for a two storey house of 426sq.m and a single storey garage of 92.63sq.m on the site of the existing building. As noted, this permission is extant and has not as yet been constructed. The current proposal on a separate site in the rural area, is in lieu of that extant permission.

- 7.4.2. It is provided that the proposed residential development represents a high-quality architectural design that has been designed to integrate sensitively with the surrounding rural landscape. In addition, they consider that the position of the house on the subject site and the provision of existing and proposed screening on the site will ensure that there will be no negative impacts on the surrounding landscape as a result of the proposed development. Reference is had to the provision of new planting and preservation of existing trees, and hedgerows. It is also intended to preserve the mature hedgerow along the L7210 by utilising the existing gated entrance into Heathwood Farm.
- 7.4.3. They refer to the Visual Impact Assessment submitted as part of this planning application for additional information regarding the potential visual impact of the proposed dwelling. It is provided that the proposed design and layout would be in accordance with the landscape character area and that for Housing in the Countryside Objectives RF58 and RD59 refer. They also refer to compliance with Objectives DMS49 and DM52 of the Fingal DP 2017-2023 in this respect.
- 7.4.4. It is noted that a Landscape Rationale and Landscape Plan have also been submitted. This includes that the existing agricultural field will be defined by earth mounds, providing distinctive landscape features that along with woodland planting and mature trees aid the visual buffer to the proposed house. Groundcover and shrub planting are to be provided for additional screening from the access road. Existing boundary trees and hedgerows are to be retained and augmented. The Council's Parks and Green Infrastructure Division recommend that the submitted landscape plan be implemented.
- 7.4.5. The First Party contend that there will be no negative impacts on the residential amenity of any existing dwellings in the area. In addition, that there is adequate distancing and screening between the proposed house and existing dwellings in the vicinity of the subject site. That in view of the scale of the subject site and landholding, that there will be ample private amenity space provided for the residents.
- 7.4.6. While it is the case that this is an ample greenfield site, I would consider that this proposal is for a sizable house and carport, to be taken off an undeveloped backland site, set well back from the public road in the rural agricultural area. As per the

Planning Policy Section above, I would not consider that a site specific local need has been established for the applicants to build this house on a separate site to that of their existing house in the rural area. I would consider that this proposal to build a second house in the rural area would materially contravene the Council's rural settlement strategy.

7.5. Archaeology

- 7.5.1. A Cultural Heritage Impact Assessment has been submitted with the application. The study aims to assess the baseline archaeological, architectural and cultural heritage environment to evaluate the potential or likely impacts of the proposed on the environment and where appropriate suggest mitigation measures to ameliorate potential impacts. This provides an assessment of the study area beside the L7210 local road and in the vicinity of the subject site.
- 7.5.2. Kilcoskan House which is described as a 16th/17th century house, in Appendix 3 Recorded Monuments of the Fingal DP 2017-2023 (SMR no. DU011-56 refers) lies to the south of the site and the landholding. It is noted that there are no standing remains in the vicinity of this or any other recorded monuments. The Assessment queries that the placement of the RMP site directly south of the study area and provides that it appears to be arbitrary and that there is no archaeological basis for a house at this location, which is currently occupied by a concrete shed. The location proposed for the development of the house and garage is an open field to the north of Kilcoskan House grounds. They provide that the potential for the development to impact on this recorded archaeological monument is low.
- 7.5.3. It is not envisaged that the proposed development will cause any negative effects to the monument. It also notes the location of 4 other monuments within 1km of the study area and details are given of these. Note is also had of previous archaeological field work in the wider surrounding area. Regard is had to aerial photography of the study area. Fieldwork relative to the study area was carried out. The Assessment provides that notwithstanding this, there are no other Recorded Monuments or Protected Structures identified within the vicinity of the site as identified under the Planning and Development Act, 2000 (as amended). However, it

recommends that archaeological assessment and monitoring be carried out relative to the proposed development of the subject site.

- 7.5.4. The Council's Planning & Strategic Infrastructure Department notes that the proposed development is c.100m from the site of Kilcoskan House identified from historic maps. A review of historic maps shows the proposed site to be located within agricultural lands. As such they have no objections to this development on archaeological grounds. The Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media, Development Applications Unit recommends that a condition relative to archaeological monitoring be included in any condition.

7.6. Access and Traffic

- 7.6.1. The existing two storey dwelling at Ballyhack has two vehicular accesses onto the R122 which is within an 80km/h speed zone and to construct a new residential unit c.500-600m away at 'Heathwood Farm', using an existing agricultural type access to form a shared entrance to the new site. The proposed development is on a narrow rural road, also in an 80km/h speed zone.
- 7.6.2. There is gated entrance to the site from the L7210 Local Road. The signage on the gate is for 'Heathwood Farm' and it is noted that this is currently to serve the existing agricultural landholding and agricultural sheds. The latter do not appear to be in use. It is noted that the Cultural Heritage Impact Assessment includes photographs of these sheds and the unsurfaced track to the site. Details have not been provided as to the agricultural usage of the landholding. Heathwood Farm is located outside the landholding to the south west of the site. As shown on the Site Location Map the entrance to 'Kilcoskin House' is further south.
- 7.6.3. The location of the proposed house and garage is to be accessed along a farm lane which runs to the north (North Lane) of the site and which diverts from a larger established lane running west (West Lane). It is noted that North Lane and the gated entrance to 'Heathwood Farm' also serve more modern larger agricultural sheds to the north east of the site. These are not included within the red line boundary of the site nor the blue line boundary of the land holding and a right of way to these sheds is not shown. Details relative to this issue have not been included in the documentation submitted.

- 7.6.4. The Council's Transportation Planning Section, is concerned that while the existing entrance is currently in agricultural use, that the proposed shared use of the entrance would incorporate an intensification of use. They provide that the proposed development is within the 80km/hr speed limit which requires 145m sightlines in both directions from a 3m set back in accordance with current standards. They note that the existing entrance is located on a narrow local road (L7210) c.2.8m wide with low traffic volumes, which does not permit two cars to pass each other. As a result, they submit that the road lends itself to lower ambient speeds in the region of 30 - 40km/hr. For a road design speed of 40km/hr, sightline visibility of 50m is required in both directions, taken from a 3m setback from the nearside road edge. They provide that given the nature of the road and low traffic volume a relaxation can be given where sightlines can be measured to the centreline of the road.
- 7.6.5. It is noted that the existing entrance/access is setback off the road and has a generous splay which allows for access of large farm machinery. The entrance is in proximity to a bend which is South of the splay area (right on exit). However, the entrance is located on the outside part of the road/bend which doesn't overly reduce sightlines to the South. Sightlines were taken at a 3m setback as a result of the increased intensification of use associated with an agricultural entrance to form a new shared vehicular access. They provide that there are no issues with sightlines to the North (left on exit), while sightlines to the South are satisfactory, with the benefit of a partial view around the bend. It is noted that the applicant proposes to upgrade the existing gates and splay area as per drawing no.401, with a timber sheeted gate and stone piers and wing walls. They recommend conditions. It is recommended that if the Board decides to permit that appropriate conditions relative to the proposed access to the road and the site be included.

7.7. Drainage issues

- 7.7.1. It is provided that a private wastewater treatment system has been specifically designed for the proposed house on this unserviced site. The location of this is indicated on the Site Layout Plan submitted. A Site Characterisation Report EPA 2009 CoP (dated February 2021) has been submitted with the application.

- 7.7.2. 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 1st of April 2021, and granted on the 24th of May 2021, so therefore the 2009 CoP still applies.
- 7.7.3. Table 6.2 of the 2009 EPA Code of Practice provides the minimum depth requirements for on-site systems discharging to ground i.e. 1.2m and at the base of polishing filter 0.9m. i.e. minimum depth of unsaturated subsoil to bedrock and the water table. Table 6.3 provides an interpretation of percolation test results and “in cases where $3 < P < 75$ the site may be suitable for a secondary treatment system and polishing filter at ground surface or overground if the soil is classified as Clay...” The ‘T’ and ‘P’ test values given should be within this range.
- 7.7.4. The Site Characterisation Assessment provides in summary, the following:
- Groundwater was encountered on-site at a depth of 1100mm below ground level.
 - Bedrock was not encountered on-site at a depth of 21mm below ground level.
 - The average T-Value was 69.42/25mm.
 - The average P-Value was 39.72 min/25mm.
 - The proposed development is sited over a Locally Important aquifer.
 - The vulnerability rating is high.
 - There are no wells on or adjacent to the site. The Applicant will apply for Irish Water mains connection.
 - The development is not subject to a discharge licence.
- 7.7.5. They recommend that based on the information contained in Table 2, that a 6PE package treatment plant compliant with current standards be installed on proposed site. Based on the findings and recommendations of the Site Characterisation Report (Appendix 1) they propose to construct a raised soil polishing filter in the area adjacent to the soil test location. The polishing filter to be constructed after the

secondary package wastewater treatment system but before discharging into ground water.

7.7.6. Details are given of an Infiltration Test BRE Digest 365. This includes that due to the large proposed catchment area, and relatively slow infiltration rates the traditional soakaway system would not be suitable for stormwater disposal on the proposed site. Accordingly, the developer shall instead implement an alternative approved Sustainable drainage system (SuDS) as per the requirements of the GDSDS, Regional Drainage Policies. They provide details of proposed underground attenuation system. It is noted that the Council's Water Service Department do not object subject to conditions about surface water drainage. If the Board decides to permit it is recommended that appropriate drainage conditions be included.

7.7.7. It is provided that water supply will be by Irish Water Public Mains. Details are not given of connections to this. However, it is noted that Irish Water have no objections to the proposal subject to a condition relative to connections.

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. It is recommended that permission be refused for the reasons and considerations below.

9.0 Reasons and Considerations

Having regard to: -

- (i) the location of the proposed development in a rural area, located within an area designated with the Zoning Objective 'RU' Rural within the Fingal Development Plan 2017-2023, which seeks to protect agriculture and

sustainable rural communities in an area which has been subject to increasing pressure for development of one-off rural housing due to proximity to Dublin and access to the M2 motorway and in accordance with Policy RF39 only allow for limited one-off housing where applicants must demonstrate a genuine local need to live in this area,

- (ii) the national policy, as set out in National Policy Objective 19 of the National Planning Framework 2018 and the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and local Government in April 2005, that facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements, and

- (iii) the documentation submitted with the application and appeal,

the Board is not satisfied that the applicant who already owns a house in the rural area and in addition, has an extant permission to build a replacement house on that site (Register Reference F14A/0214/E1 refers), has provided sufficient justification for a rural housing need to build another/alternative house on a greenfield site in this rural agricultural area. While the Board acknowledges the issues as presented, and the applicant's family ties to the area and to the relevant local need criteria of the County Development Plan, it is considered that the threshold to demonstrate a functional economic or social need to build another rural house in this area under development pressure has not been met. In the absence of a sufficient justification, it is considered that the proposed development would contribute to the development of random rural housing in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would be contrary to the Sustainable Rural Housing Guidelines and to overarching national policy, notwithstanding the provisions of the Louth County Development Plan 2015-2021 and would, therefore, be contrary to the proper planning and sustainable development of the area.

Angela Brereton
Planning Inspector

28th of October 2021