



An
Bord
Pleanála

Inspector's Report

ABP-311184-21

Development	Construction of house, including garden room/home office, storage shed, a waste-water treatment system, percolation area together with all associates site works.
Location	Annagh McCanns, Knockbridge, Co. Louth.
Planning Authority	Louth County Council.
Planning Authority Reg. Ref.	21731.
Applicant(s)	Niamh McGovern.
Type of Application	Planning Permission.
Planning Authority Decision	Refusal.
Type of Appeal	First Party
Appellant(s)	Niamh McGovern.
Observer(s)	None.
Date of Site Inspection	15 th day of January, 2022.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. The irregular L-shaped appeal site has a stated site area of 0.26ha. It is located in the Townland of Annagh McCanns, with a setback of c65m to the south west of the heavily trafficked L-3136 Local Road, at its nearest point, c3.5km to the north west of Knockbridge and c9km to the west of Dundalk.
- 1.2. The site forms part of a larger agricultural field that appears to be for grazing use. It is accessed from an agricultural gate that opens onto a T-shaped cul-de-sac lane that provides access to the L-3136 c93m to the north of the said gate, as the bird would fly. There are five dwellings bounding this lane to the immediate north as well as agricultural buildings and agricultural land. This laneway's access onto the L-3136 pairs with an access serving a rural dwelling on its northern side. In close proximity to the west and east of this entrance onto the L-3136 are entrances serving one off rural dwellings as well as parcels of agricultural land.
- 1.3. The subject field is also served from another agricultural entrance that opens onto a cul-de-sac lane that aligns with the south eastern boundary of the field. This lane is accessed from a gated access off the L-3136 to the east and it serves a one-off rural dwelling.
- 1.4. On the opposite side of the L-3136 there is an access serving a one-off rural dwelling and there is another detached dwelling situated in close proximity to the south east of the site.
- 1.5. The surrounding area is characterised by its rolling drumlin landscape with geological features and lakes. The site is located to the west of a drumlin ridge with the lands falling steeply towards the public road where there are deep drainage ditches and to the west and south of this ridge.
- 1.6. The site is bound by tillage land on its western side.
- 1.7. Despite the site being situated in the open countryside with its predominant function and character informed by agricultural activities I observed that the surrounding area contained a strong proliferation of on-off houses.

2.0 Proposed Development

2.1. Planning permission is sought for the construction of a part single and part two storey 3-bedroom dwelling, garden room/home office and storage shed, a proprietary waste water treatment system and percolation area and all associated site works. The documentation submitted indicate that the gross floor space of works is 200m² and that a T-shaped extension to the access lane is indicated outside of the redline area and immediately to the south of where the existing access lane finishes. This application is accompanied by a number of documents including the following:

- Letter of Consent
- Wastewater Treatment System Site Suitability Assessment Report.
- A Soakaway Design BRE 365 Digest Report.
- Planning Statement.
- Louth County Councils - Qualifying Criteria Form for One Off Rural Housing.
- A number of documents which seek to support the applicant's category of need for a rural dwelling and qualification for a one-off rural house.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 29th day of July, 2021, the Planning Authority decided to refuse permission for the proposed development for the following stated reasons:

- "1. *The proposed development, by reason of its location to the rear of existing dwellings along the public road would constitute an inappropriate form of piecemeal development and an intrusive encroachment of physical development into the open scenic landscape. The proposed development would militate against the preservation of the rural environment and would set an undesirable precedent for other such developments in the vicinity. Such development would be contrary to Policies SS 25 of the Louth County Development Plan 2015-2021 which require applications for one-off houses demonstrate compliance with the Development Management Assessment*

Criteria for One-Off Rural Housing as detailed in Section 2.19.7 (specifically in relation to the cumulative visual impact and lack of existing natural shelter) and policy SS26 which requires that the siting of a proposed dwelling is such that it does not detract from the rural character of the landscape or the visual amenities of the area. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

- 2) *On the basis of the information provided with the application and in the absence of Appropriate Assessment Screening /Natura Impact Statement the Planning Authority cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Dundalk Bay SAC or Dundalk Bay SPA, or any other European site, in view of the site's Conservation Objectives. In such circumstances, the Planning Authority is precluded from granting permission for the subject development.*
- 3) *The applicant has failed to demonstrate to the satisfaction of the planning authority that the proposed Wastewater Treatment System (WWTS) serving the proposed dwelling complies with the EPA Code of Practice, 2009 and EN 12566-3 Annex A, B & C. The proposed development would therefore contravene Policy SS65 of the Louth County Development Plan 2015-2021 and would be prejudicial to public health."*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Authority's Planning Officer's report 21st day of July, 2021, is the basis of their decision. It can be summarised as follows:

- The applicant is considered to have a rural housing need and qualifies under Criteria 2 for Zone 5.
- The site is considered to be contrary to Policy SS 26 of the Development Plan.
- Despite the cluster of development in the immediate vicinity it is considered that this proposal represents a form of piecemeal development which is uncharacteristic of this area and would be a protrusion of development into the surrounding countryside.

- The extension of the lane serving the proposed dwelling could also be used for further enable development within the immediate vicinity of the site.
- The site benefits from limited boundaries to help assimilate this development into its setting.
- The proposed development would not give rise to adverse residential amenity impacts on properties in the vicinity.
- This proposal would contravene Policy SS 65 of the Development Plan and would be prejudicial to public health due to the documentation provided being inadequate to demonstrate wastewater disposal to the required standards.

3.3. Other Technical Reports

- 3.3.1. **Infrastructure:** No objection, subject to safeguards.
- 3.3.2. **Environment:** Concludes with a request for additional information on the matter of ground water risk.

3.4. Prescribed Bodies

- 3.4.1. None.

3.5. Third Party Observations

- 3.5.1. None.

4.0 Planning History

4.1. Site

- 4.1.1. None.

4.2. Appeal Cases in the Vicinity

- 4.2.1. **ABP PL02.246052 (P.A. Ref. No. 15/602):** On appeal to the Board planning permission was **refused** for a development consisting of a detached single storey house and all associated site works. The single reason and consideration reads:

“The proposed development is located in a rural area 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. It is an objective of the planning authority, as expressed in the current development plan for the area, to channel housing into the identified settlements in accordance with the Core Strategy, and to require that qualifying criteria are met for rural housing in accordance with Policy RD29 and Policy SS18 of the Louth County Development Plan 2015. This objective is considered reasonable. The applicant does not come within the scope of the qualifying criteria for rural housing as set out in Section 2.19.1 of the development plan and the proposed development, therefore, is contrary to the objectives of the development plan. Furthermore, taken in conjunction with existing and permitted development in the area, it is considered that the proposed development would give rise to an excessive density of development in a rural area, all served by individual wastewater treatment systems. This would lead to demands for the uneconomic provision of further public services and facilities in an area where these are not proposed. The proposed development would, therefore, would be prejudicial to public health and contrary to the proper planning and sustainable development of the area.”

Date of Decision: 15th day of June, 2016.

5.0 Policy & Context

5.1. Development Plan

- 5.1.1. The Louth County Development Plan, 2021-2027, came into effect on the 11th day of November, 2021. Under Map 3.1 of the said plan the site is located in a rural area under urban influence (Rural Category 1) and under Map 3.2 the site is located within Rural Policy Zone 2 land. Applicants for one-off dwellings in Rural Policy Zone 2 are required to meet the qualifying criteria set out in Table 3.5 of the said Plan.
- 5.1.2. Section 13.9 of the Development Plan deals with the matter of housing in the open countryside. With Section 13.9.1 setting out that countryside is a valuable resource that provides a scenic landscape enjoyed by residents and visitors, and farmland that delivers high quality produce. It also sets out that “*whilst this Plan acknowledges the desire of local residents to live in the rural area, the provision of one-off housing in the*

open countryside must be carefully managed in order to protect the landscape and countryside for future generations to work in and enjoy”.

- 5.1.3. Section 13.9.10 of the Development Plan deals with Garages and Outbuildings in the Countryside. It sets out that: *“garage will normally be positioned to side or rear of the dwelling and will be designed and finished in materials that match the dwelling. The design and scale of any garage shall be proportionate to the dwelling”.*
- 5.1.4. Section 13.9.5 of the Development Plan deals with the matter of ribbon development.
- 5.1.5. Section 13.9.19 of the Development Plan states: *“applicants for one-off rural housing will be required to demonstrate compliance with the criteria relevant to the specific Rural Policy Zone in which the application site is to be located. The qualifying criteria for each policy zone is outlined in Section 3.17.4 of Chapter 3 ‘Housing”.*
- 5.1.6. Section 13.20.3 of the Development Plan deals with Domestic and Commercial Wastewater Treatment and states that: *“domestic wastewater treatment plants and percolation areas must comply with the Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent ≤10) (EPA, 2021) or any subsequent updated guidance”.*
- 5.1.7. Policy IU 16, IU 17 and IU 18 of the Development Plan deal with proprietary wastewater treatment systems.
- 5.1.8. Section 13.16.17 of the Development Plan deals with Entrances and Sightlines. It states that: *“a well-designed access is important for safety and convenience of all road users”.*
- 5.1.9. Table 7.10 of the Development Plan sets out the restrictions and exemptions on Protected Regional Road. It includes the R173/R175 Dundalk Greenore Roads as Protected Regional Route.
- 5.1.10. Section 8.11 of the Development Plan deals with the matter of hedgerows and sets out that there will be a presumption other than in exceptional circumstances against their removal.
- 5.1.11. Section 13.16.17 of the Development Plan deals with the matter of entrances and sightlines.

- 5.1.12. Table 13.13 of the Development Plan sets out the requirements for entrances onto various categories of roads and for local roads requires a sightline of 75m from a 3m setback from the edge of the carriageway.
- 5.1.13. Section 13.19 of the Development Plan deals with the matter of Heritage with Section 13.19.1 dealing with the matter of archaeology.
- 5.1.14. Policy Objective HOU 36 of the Development Plan sets out that the Planning Authority will seek “*to discourage urban generated housing in rural areas and direct proposals for such housing to the towns and villages in Settlement Levels*”.
- 5.1.15. Policy Objective HOU 41 of the Development Plan sets out that the Planning Authority will seek: “*to manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the Local Needs Qualifying Criteria relative to the Rural Policy Zone set out in Tables 3.4 and 3.5*”.

5.2. Regional

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

RPO 4.80 sets out that Local Authorities shall manage urban growth in rural areas under strong urban influence by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstratable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3. National

- National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government, (2018).
- Sustainable Rural Housing Guidelines, (2005).
- Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.
- The Development Management Guidelines for Planning Authorities, June, 2007.

5.4. Natural Heritage Designations

- 5.4.1. There are no European Sites within the vicinity of the site. The nearest European site is Dundalk Bay SPA (Site Code: 004026) which is located c6.6km to the east of the site at its nearest point.

5.5. EIA Screening

- 5.5.1. The proposed development comprises a 'project' for the purposes of environmental impact assessment and falls within a class set out in Part 2, Schedule 5 of the Planning and Development Regulations, 2001 (as amended), Infrastructure Projects, construction of dwelling units.
- 5.5.2. The development is significantly below the threshold for the class. The site is within 500m of Cortial Lough a pNHA. Notwithstanding, based on the information submitted with this application and on appeal which demonstrates that the that surface water and wastewater will be discharged on site, with no adverse effects on the aforementioned European sites or any others in the wider vicinity the need for environmental impact assessment, the lateral separation distance of the nearest European Site which is c6.6km in a easterly direction over such a distance significant dilution and dispersion would take place to the extent that any potential impact on the qualifying interests associated the Dundalk Bay SPA, the nearest European site, and any other European sites located at further distance from the site on their qualifying interests would be infinitesimal, and therefore can be excluded at preliminary examination and a screening determination is in my view not required for this subthreshold proposed development.

5.6. Built Heritage

- 5.6.1. In the vicinity of the site are the following Recorded Monuments:
- LH-00422 – 'RATH' lies c147m to the south east.
 - LH-00530 – 'ROCA' lies c300m to the north west.
 - LH-00427 – 'SOUT' lies c309m to the south east.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. The grounds of this First Party Appeal can be summarised as follows:

- The Planning Authority failed to have regard to National and Regional planning policy provisions which are supportive of this type of proposal.
- The decision of the Planning Authority is unreasonable having regard to pattern of development in the immediate locality with established precedents and comparable site layouts for one-off rural dwellings.
- A review has been carried out of the settlement of Knockbridge and there are no lands or housing units available for purchase. Therefore, a local member of the community has no other option but to construct the proposed dwelling on the only lands which are available to them.
- This proposal is consistent with local planning provisions.
- The proposed development would be setback from public views.
- This proposal would have no impact on any designated European Site.
- The site is suitable for the treatment of wastewater.
- The proposed dwelling is to meet the housing need of the applicant.
- The site is located in a typical rural area that is interspersed with long-standing detached dwellings and agricultural lands.
- Where an applicant is a member of a rural community and there are no other available lands the principal of this type of development is argued to be an acceptable form of development.
- The applicant has a social need to live in this rural area.
- There is precedent in the surrounding area for similar developments.
- This development is rural generated.
- The site chosen allows for optimum preservation of the rural landscape setting and is consistent with the pattern of development in this locality.

- The proposed development does not give rise to adverse residential and/or visual amenity impacts.
- The Planning Authority were satisfied with the access arrangements.
- It is demonstrated that the site can accommodate the wastewater treatment system without impacting on ground water quality of any water well sources in the locality.
- The established character of the area consists of clusters of dwellings positioned along both sides of the road and existing laneways.
- This proposal does not cause or exacerbate ribbon development given the extensive setback from the road frontage and with the house being located to the rear of an intervening drumlin.
- No field boundaries are required to be removed to facilitate this proposal.
- People who are part of the rural community should be facilitated by the planning system in all rural areas.
- The existing laneway is *in-situ* and the proposal incorporates a private driveway as is associated with any rural dwelling.
- The Board is sought to overturn the decision of the Planning Authority in this case.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response to the grounds of appeal can be summarised as follows:

- The proposed development is piecemeal and would result in further intrusion of development into the open countryside.
- The proposed new roadway serving this development would extend a cul-de-sac and would open up further lands for this type of potential development.
- Reference is made to Section 2.19.7 of the Development Plan which sets out that regard must be given to the cumulative visual impact, pattern of development and the number of houses granted in the landholding.
- As adequate arrangements for wastewater have not been demonstrated the second reason for refusal has not been addressed and considering the potential

for pluvial flooding to the south of the site it is not considered it has been demonstrated that the proposed development would not have an impact upon the conservation objectives of Dundalk Bay SPA and SAC via a watercourse located immediate to the site.

- It was not possible at the time of assessment to make a determination on whether the proposed development was in compliance with EPA Code of Practice, 2009, and EN 12566-3 Annex A, B & C.
- Whilst the applicant has demonstrated a local housing need, this is only one of the considerations in the assessment of rural housing applications. Technical and environmental considerations must also be given due consideration.
- The proposed development, if permitted, would set an undesirable precedent.
- The Board is requested to uphold its decision.

7.0 **Assessment**

7.1.1. Having examined the application details, all other documentation on file in relation to this appeal case, together with having carried out an inspection of the site and having had regard to relevant local through to national policies and guidance, I consider that the main issues in this appeal arise from the Planning Authorities reasons for refusal with these relating to:

- 1) Principle of the Proposed Development & Compliance with Rural Settlement Strategy.
- 2) Drainage.
- 3) Appropriate Assessment

7.1.2. I propose to deal with other pertinent matters under the heading 'Other Matters Arising' at the end of my assessment.

7.1.3. The appellant as part of their appeal submission raises procedural concerns in relation to the Planning Authority's determination of the subject application when it was before them for determination. They also raise concerns as to why the Planning Authority did not seek further information to address their concerns prior to making their determination.

- 7.1.4. On these matters for clarity, I note the application is now before the Board by way of this 1st Party appeal and that it will be assessed on an entirely *de novo* basis with the final decision on based on the appropriateness of this development at this location based on the proper planning and sustainable development as provided for under local through to national planning policy provisions and guidance.
- 7.1.5. I also note that the Development Management Guidelines for Planning Authorities, June, 2007, states that: “*further information may only be sought where it is necessary for the determination of the application*”; and, that: “*requests for further information under Article 33 on one aspect of a proposal should not be sought where there is a fundamental objection to the proposed development on other grounds; applicants should not have to suffer unnecessary delay or expense if a refusal is likely*”.
- 7.1.6. Having regard to these guidance, the Planning Authority’s Planning Officers assessment and the particularly having regard to the substantive issue raised out in the Manager’s Order first reason for refusal which sets out visual amenity concerns and the requirements of such applications to demonstrate compliance with the Development Management Assessment Criteria of the Louth County Development Plan, 2015-2021, this was a fundamental and substantive reason in itself to have supported a refusal of planning permission.
- 7.1.7. It is also a reason that in terms of siting considers the choice of location inappropriate for the type of development sought under this application.
- 7.1.8. In my view the concern which forms the basis of the Planning Authority’s reasons for refusal could not have been addressed by way of a request for additional information alone and to have sought additional information on it together with the Appropriate Assessment and Wastewater Treatment concerns which form the basis of the second and third reason of refusal in the Managers Order.

7.2. **Principle of the Proposed Development and Compliance with Rural Settlement Policy Provisions**

- 7.2.1. The first reason given in the Planning Authority’s notification to refuse planning permission that the proposed development did not satisfy the requirements for one-off rural housing as provided for in the Louth County Development Plan, 2015-2021, due to the visual amenity impact it would give rise too. Despite the Planning Authority’s Planning Officer’s report indicating that the appellant had a housing need and qualified

under Criteria 2 of the Development Plan for house at this locality which under the Louth County Development Plan, 2015-2021, was zoned 'Zone 5'. This in part was the basis of the first reason for refusal.

7.2.2. The aforementioned Louth County Development Plan, 2015-2021, has been superseded by the Louth County Development Plan, 2021-2027.

7.2.3. Under this new plan there is a general presumption against one-off rural housing at rural locations in the open countryside of Louth with the entirety of rural land being identified as under strong urban influence except where applicants can demonstrate compliance for this type of Development Plan as provided for under its zoning, the applicable local needs qualifying criteria through to other siting and design considerations.

7.2.4. In addition, Policy Objective HOU 36 of the Development Plan sets out that the Council will discourage urban generated housing in rural areas and directing such proposals to towns and villages and Policy Objective HOU 41 of the Development Plan sets out that the Council will manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with Local Needs Qualifying Criteria relative to the Rural Policy Zone set out in Tables 3.4 and 3.5 as appropriate. With this being the case, it is appropriate as part of the Boards *de novo* consideration of this appeal case that the appellants compliance with the local planning provisions for a one-off rural dwelling is re-examined.

7.2.5. This appeal site is located on Rural Policy Zone 2, a rural area of strong urban influence and the qualification criteria for an applicant seeking to build a one-off dwelling must demonstrate that they comply with one Table 3.5 of the Development Plan.

7.2.6. Having regard to Table 3.5 of the Development, I note the following:

- Criteria 1 relates specifically to applicants who are persons engaged in full-time agriculture. There is no information on file that supports that the appellant is engaged in full-time agriculture. Therefore, the applicant does not meet the criteria for a one-off rural dwelling house at this rural locality based on this need.
- Criteria 2 relates to a person whose business requires them to reside in the rural area. There is no information on file that supports that the appellant is engaged in

business that requires them to reside in this rural locality. Therefore, the applicant does not meet the criteria for a one-off rural dwelling house at this rural locality based on this need.

- Criteria 3 relates to landowners including their sons and daughters who have a demonstrable social or economic tie to the area they are seeking to build their home. The site relates to a parcel of land that by landowner who does not meet the definition of qualifying landowner under Section 3.17.4 of the Development Plan. This section of the Development Plan defines qualifying landowner as “*a person who owns a landholding of at least 1.5 hectares and has owned the land for a minimum of 15 years*”.

The documentation on file indicates that the land is in the ownership of a neighbour and the other documentation provides indicates that the appellants family home relates to a one-off rural dwelling with no demonstration of them being connected by way of rural employment, agriculture or otherwise to this rural locality.

Further no affidavit is provided on the matter of residence at this locality or to support residence at the appellants family home for the 18 years prior to the making of this application through to that they have not owned or sold a residential property in the county for a minimum of 10 years prior to the making of an application.

Setting these issues and concerns to aside this local need criteria clearly states that “*any applicant under this category must demonstrate a rural housing need*”.

Having regard to the documentation provided with this application whilst connecting the appellant to this rural locality does not support that she has a demonstrate rural housing need as opposed to a desire for a one-off rural dwelling in this rural locality. A rural locality whose rural landscape qualities, intrinsic character and attributes has been cumulative eroded as well as diminished by this type of development.

The document provided which comprises of the following: a birth certificate; a map indicating their residence in their family home and this property’s proximity to the site; a letter from the appellants parents; a signed letter by them which is not in the form of an affidavit; a letter of attendance at a local national school through to a letter from the parish priest in totality could not in my view be considered as reasonably robust in supporting that the appellant in this case has a demonstratable need, social through to economic, for a one-off rural dwelling at this location.

Based on the above considerations the appellant in this case does not demonstrate that they meet the third criteria.

- Criteria 4 relates to persons who are seeking to build their first house in the area and have a demonstrable economic or social requirement to live in that area. Whilst it would appear that the appellant in this case is seeking to build their first house, they have not for the reasons previously set out above demonstrated an economic or social requirement to live in this rural locality. This criterion is also based on the same caveats as those set out in the previous criteria discussed. I am therefore not satisfied based on the information provided with this application or with this appeal which provides no further robust evidence or clarity on this matter that the appellant meets this criterion.

- Criteria 5 relates to an emigrant who was resident of the area having previously resided in the area and is subject to safeguards. The appellant is not a returning emigrant and therefore does not meet this criterion.

- Criteria 6 relates to persons who are required to live in a rural area for exceptional health reasons and is subject to safeguards. The documentation submitted with this application does not support that the appellant has any exceptional health reasons for the proposed one-off rural dwelling at this location. Therefore, they do not meet this criterion.

- Criteria 7 relates to residents who have demonstrable social ties to the area and are providing care for an elderly person(s) or a person(s) with a disability who lives in an isolated rural area and who does not have any able-bodied person residing with them. This criterion is subject to safeguards. The documentation submitted with this application does not support that the appellant provides such care within this area. Therefore, they do not meet this criterion.

- Criteria 8 relates to a person who has been a resident for at least 10 years that previously owned a home and is no longer in possession of that home due to the home being disposed of following legal separation / divorce / repossession and can demonstrate a social or economic need for a new home in the rural area. The documentation submitted with this application does not support that the appellant is in this circumstance and as previously discussed they have not demonstrated a social or

economic need for a new home in this rural area. Therefore, they do not meet this criterion.

- 7.2.7. Having regards to the above the appellant has failed to demonstrate that they meet the qualifying criteria for a one-off rural dwelling house at this rural locality under strong urban influence.
- 7.2.8. Therefore, to permit the proposed development would be contrary to Policy Objective HOU 41 which sets out that the Planning Authority will manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the local needs qualifying criteria relative to the Rural Policy Zone set out in Tables 3.4 and 3.5 of the Development Plan.
- 7.2.9. In relation to regional planning provisions under RPO 4.80 of the Regional Spatial Economic Strategy – Eastern & Midland Region, it sets out that Local Authorities shall manage urban growth in rural areas under strong urban influence by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstratable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements. I therefore consider the relevant local planning zoning and policy provisions set out above are consistent with RSES.
- 7.2.10. At a national level locations identified as being under strong urban influence the National Planning Framework, National Policy Objective 19, requires developments like this to demonstrate a functional economic or social requirement for housing need in areas under urban influence. With this being stated as a necessity.
- 7.2.11. It also indicates that such applications shall be also subject to siting and design considerations.
- 7.2.12. As discussed below there are other matters, in particular the visual amenity impact concerns in relation to the proposed development and the ability of this rural location to absorb further proliferation of this type of development.
- 7.2.13. Further, National Policy Objective 3a of the National Planning Framework seeks to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements and National Policy Objective 33 seeks to prioritise the provision of new

homes at locations that can support sustainable development as well as at an appropriate scale of provision relative to location.

- 7.2.14. I also note that the Sustainable Rural Housing Guidelines for Planning Authority's whilst setting out that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures. They require the planning system to facilitate people who are part of the rural community, including in areas under strong urban influence subject to safeguards such as meeting the normal requirements in relation to such matters as road safety, proper disposal of surface water while directing urban generated development to areas zoned for housing development in cities, towns, and villages through the local planning process. They advocate that a balance in terms of development in the countryside is reached so that the landscape is conserved and that new dwellings take account of as well as integrate in an appropriate manner with their surroundings.
- 7.2.15. I note to the Board that Map 1 which sets out the indicative outline of NSS Rural Area Types places the site in an area under strong urban influence.
- 7.2.16. I also do not accept that there not other alternatives within this rural locality to meet the appellants housing need or that their housing need is one that can not be meet in other settlements within the immediate and wider locality either by way of existing housing stock, under construction housing stock, housing stock that is for sale within the rural locality and its setting through to residentially zoned as well as serviced lands.
- 7.2.17. Moreover, this type of development gives rise to further proliferation of unsustainable development that is highly reliant upon private vehicle car use, places further burdens on the local environment in terms of the proliferation of wastewater treatment systems, reduces agricultural land for food production and loss of biodiversity in such rural locations.
- 7.2.18. Based on the above considerations, I am of the view that in the absence of a demonstratable rural housing need, to permit the proposed development would be contrary to local, regional and national policy framework for rural one-off housing. I therefore consider that the proposed development, if permitted, would be contrary to the proper planning and sustainable development of the area.

7.3. Visual Amenity Impact

- 7.3.1. The first reason given in the Planning Authority's notification to refuse planning permission essentially considered that the proposed development would constitute an inappropriate form of piecemeal development and an intrusive encroachment of physical development into the open scenic rural landscape.
- 7.3.2. It further considered that the proposed development would militate against the preservation of the rural environment and would set an undesirable precedent for other such developments in the vicinity.
- 7.3.3. Moreover, it considered that the proposed development did not satisfy the requirements for one-off rural housing as provided for in the Louth County Development Plan, 2015-2021.
- 7.3.4. For these visual amenity impact concerns, it was considered that the proposed development, if permitted, would be contrary to the proper planning and sustainable development of the area.
- 7.3.5. The appellant's grounds of appeal make a case that the proposed development is one that would not give rise to any serious visual amenity concerns due to it being consistent with the character of residential development in this rural location. Alongside the fact that the site is setback from the local road with access being proposed off an existing cul-de-sac lane that serves other development including one-off detached rural dwellings and with the built forms set behind the ridge line of the drumlin that characterises the topography of this site.
- 7.3.6. In addition, it is argued that the Planning Authority have permitted other similar developments that have integrated into what is described as a rural cluster of this type of developments.
- 7.3.7. The Planning Authority's Planning Officer on the other hand considered that the site chosen for the proposed development together with the nature of the development proposed would be a form of piecemeal development that would be a protrusion into the surrounding and could potentially set a precedent for other similar development within its immediate vicinity.

7.3.8. On the matter of establishing further precedent for other similar developments I concur with the Planning Authority's Planning Officers concerns in this regard. This concern in my view is based on a number of factors including:

- 1) The position of the site relative to the agricultural field that it forms part of.
- 2) The indicative design of the extension to the existing laneway that would serve the proposed development's access and egress requirements to the public road network. This link is outside of the redline area and consists of an extension of the lane outside of the redline area. This is separate to the driveway serving the proposed dwelling within the redline area and the entrance onto this extended section of lane which in the form proposed could provide other access points onto the lane above that of reinstating the lost agricultural access.
- 3) The incursion of the site into an agricultural field at this location would result in its further agricultural use diminishment and the field with its immediate setting becoming more residential in its predominant function.
- 4) The backland positioning of the site relative to the local road with a parcel of agricultural land in between and a one-off rural dwelling on the opposite side of the L-3136.

7.3.9. When this is considered against the significant proliferation of one-off rural dwellings within this rural location, including aligning with either side L-3136, which effectively is forming a linear ribbon of such developments with backland residential also characteristic of this immediate rural location I consider this concern is reasonable in its basis.

7.3.10. Having regard to the site, its lack of boundaries, the minimal screening proposed to screen a proposed development that would protrude above the ridge line of a drumlin and that would add to the *ad hoc*, piecemeal, and haphazard form of what is a more suburban pattern of residential development would add in my view to further diminishment of this rural landscape.

7.3.11. It would also militate against the preservation of the rural environment, it would give rise to an excessive density of development of rural land for residential development at a low density with no services, infrastructure and amenities to serve them, it would also place further pressure on the L-3136 local road, which I observed carries a high

volume of traffic in either direction that has a proliferation of entrances onto it and has a posted speed limit of 80kmph.

- 7.3.12. In my view this rural landscape is one that is limited to capacity to serve further such rural developments and what capacity it may have should be safeguarded for land uses that are consistent with the predominant function of these rural lands and are consistent with proper planning and sustainable development of the area as provided for under relevant planning policy provisions and guidance.
- 7.3.13. Based on the above considerations I consider that the second reason of the Planning Authority to refuse planning permission is with basis and merit.

7.4. Drainage

- 7.4.1. The Planning Authority's third reason for refusal relates to their concern that the applicant has failed to demonstrate to their satisfaction of the Planning Authority that the proposed wastewater treatment system serving the proposed dwelling complies with the EPA Code of Practice, 2009, and with EN 12566-3 Annex A, B and C. For this reason, it concluded that the proposed development would contravene Policy SS 65 of the Louth County Development Plan, 2015-2021, and would be contrary to the proper planning and sustainable development of the area.
- 7.4.2. As previously set out the Louth County Development Plan, 2015-2021, has been superseded by the Louth County Development Plan, 2021-2027. Under this newly adopted Development Plan Section 10.2.3 deals with the matter of on-site wastewater treatment systems in the County and sets out the requirements for these to comply with the EPA Code of Practice Domestic Waste Water Treatment Systems, Population Equivalent ≤ 10 (2021).
- 7.4.3. As part of the appeal submission the appellant contends that the site characterisation report provided demonstrates that the site can accommodate a wastewater treatment system in accordance with EPA's previous Code of Practice for domestic wastewater treatment systems. It does not set out any comments in relation to new code of practice though this has been in place prior to the making of this application.
- 7.4.4. I note that the EPA Code of Practice, 2021, applies to site assessments and their associated installations carried out on or after the 7th day of June, 2021, and that the EPA Code of Practice for Waste water Treatment and Disposal System Serving Single

Houses (i.e., ≤10) may be used where planning permission has been applied for before that date.

- 7.4.5. This application was made to the Planning Authority on the 11th day of June, 2021, and therefore Policy Objective IU 18 of the Development Plan is applicable. This policy requires such applications to demonstrate that they can comply with the recommendations set out in the said EPA Code of Practice, 2021.
- 7.4.6. The application is accompanied by a 'Wastewater Treatment System Site Suitability Assessment Report', dated the 9th day of June, 2021, and it was prepared by a Fetac Level 6 Site Assessor.
- 7.4.7. Under the general details provided it indicates that the maximum number of residents is 6 based on three double bedrooms in the proposed dwelling and that this proposed dwelling would be served by way of a public mains water supply.
- 7.4.8. In relation to the site itself it sets out that the aquifer category as poor (PI); that the vulnerability is 'Extreme'; that the site is not located within a groundwater protection scheme ; that the groundwater protection response is R2¹; there was no observable archaeological, natural and/or historically significant sites present; that the past experience in the area is advanced wastewater treatment systems to new dwellings, weathered rock through to free draining soil on elevated sites. Based on these details the target at risk is identified as ground water as a resource and a source with surface water at risk if present.
- 7.4.9. Section 3 of the report describes the landscape position as the side of slope (Note: 1.5-1:20) with the site situated within a drumlin topography with 6 no. dwellings served by wastewater treatment systems and mains as well as two domestic wells within 100m of the site. The ground water flow is described as north to south in its direction and that there was marshland within c164m of the proposed percolation area and there was an existing well 87m up-gradient.
- 7.4.10. The trial holes were excavated to 2.1m where the first 0.3m silt/clay was encountered and there under to 0.9m silt with gravelly sand and frequent cobbles, boundaries of sandstone and shale and clay mixed with pebbles, cobbles, and occasional shale boulders.

- 7.4.11. From 0.9m to the base of the trial hole silt with silt/clay with gravels and frequent cobbles and boulders of broken sandstone and shale was encountered.
- 7.4.12. Depth from ground surface to water table was at 2.1m.
- 7.4.13. The assessor determined that all soils encountered appeared suitable to treat effluent and that the likely pathway of treated effluent would be downwards. Therefore, surface water ponding was deemed to be unlikely.
- 7.4.14. An average T-test result of 13.61 (min/25mm) is given.
- 7.4.15. This report concludes that the site is suitable for the proposed installation of a package wastewater treatment system and polishing filter with discharge to ground water.
- 7.4.16. The Planning Authority's Environmental Compliance Section considered the information provided in relation to the proposed proprietary wastewater treatment system to be inadequate. Their report dated the 30th day of June, 2021, concluded with a request for additional information with this seeking the preparation of a ground risk assessment report.
- 7.4.17. As there was a substantive reason to refuse planning permission for the proposed development this information was not sought and as the information was inadequate to provide assurance that the proposed development would not give rise to any public health issues the concerns in relation to ground water gave rise to the third reason for refusal.
- 7.4.18. As part of the appeal submission a 'Ground Water Risk Assessment' has been prepared and submitted. This report is dated August, 2021. It sets out that the existing chemical and microbiological composition of the ground water in the general vicinity has been determined by analysing a water sample taken on the 12th day of March, 2021. The location of the well relative to the site is shown and it is further indicated that the source is not subject to treatment and the results of its analysis are provided with it showing in the view of the authors that the existing microbiological and physio-chemical quality of the ground water is satisfactory despite the slight contamination by microbial organisms from a vegetation source. I note that this report sets out the geological, site, rock type, aquifer details, ground water vulnerability, ground water protection zone of the site and its setting. I also note that it discusses that the minimum depth of subsoil over the bedrock is as per the standards set out under the EPA Code

of Practice, 2021, for the installation of wastewater treatment and disposal systems and the suitability of the type of system proposed. It is further indicated in this report that it has been designed and would be constructed by the EPA certified site assessor who was author of the Site Suitability Assessment Report provided with this application.

7.4.19. This report concludes out that subject to standard safeguards that the risk to both the microbiological and chemical quality of the ground water is negligible in this case.

7.4.20. I note that the Board refused planning permission for a similar development c30m to the north of this site under ABP Ref. No. PL15.24052 (P.A. Ref. No. 15/602) for reasons and considerations that included the following:

“Having regard to the pattern of development in the vicinity, and to the means of wastewater disposal proposed, it is considered that the proposed development would add to a proliferation of septic tanks and individual wastewater treatment systems in an area which is identified by the Environmental Protection Agency as an area under very high risk of pollution from domestic wastewater systems. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area”.

7.4.21. Since the Board made this decision on the 15th day of June, 2016, the Planning Authority permitted a dwelling house on this appeal case site and other one-off dwellings have been permitted in a rural landscape where there is a strong proliferation of this type of dwellings with these dwellings being dependent upon proprietary wastewater treatment systems.

7.4.22. The ground water risk assessment provided does not include any other ground water samples other than the one from a purported well to the rear of a dwelling house c44m from the site that is said to be untreated.

7.4.23. Given the proximity of this well to septic tanks with this water source also being down slope of a proprietary water treatment systems serving one-off back rural dwellings at this location I am not satisfied that this sufficient robust evidence to base any findings that the proposed development would not give rise to any further groundwater quality issues at this location either individually or in-combination with other systems in its vicinity.

7.4.24. Conclusion

Based on the information provided with this application and on appeal I consider that whilst subject to best practice, in particular compliance with the EPA Code of Practice, 2021, that the wastewater treatment system component of the proposed development would be acceptable in that it would not be likely to give rise to any public health issues or contamination of ground water in area subject to it being installed and maintained as required.

Notwithstanding, given the proliferation of wastewater treatment systems in this area, the areas's vulnerability to pollution from domestic wastewater treatment systems when taken together with the lack of demonstratable local need for this type of development at this location, the site's location c60m uphill of a watercourse that directly connects to proposed Natural Heritage Areas of Drumcah, Toprass and Cortial Loughs. With this pNHA at its nearest point being situated c145m to the east of the site, I am of the view that further unsustainable provision of such systems would represent unsustainable and inappropriate development at such a site sensitive location.

I am therefore not satisfied based on the information provided with this application and on appeal that the proposed development would not be prejudicial to public health or that it would not add to any cumulative diminishment of ground water as a resource and as a source at this location from the proliferation of wastewater treatment systems.

7.5. **Appropriate Assessment**

- 7.5.1. The Planning Authority's second reason for refusal relates to the lack of demonstration provided with the application that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Dundalk Bay SAC or Dundalk Bay SPA, or any other European sites, in view of their conservation objectives. It therefore concludes that in this circumstance they are precluded from granting permission for the proposed development sought under this application.
- 7.5.2. As set out under Section 5.4.1 of this report above there are no European Sites within the vicinity of the site. The nearest European site is Dundalk Bay SPA (Site Code: 004026) which is located c6.6km to the east of the site at its nearest point.

- 7.5.3. In addition, as discussed in Section 7.4 above the appeal submission has provided further clarity in terms of the proposed developments potential to adversely impact ground water as a resource and as a source.
- 7.5.4. As part of this they have demonstrated that the proposed development, subject to standard safeguards, would not give risk to any contamination risk to ground water as a resource or as a source and given the significant lateral separation between the site and the nearest European site, it would not, individually or in combination with other plans or projects be likely to have a significant effect on a European site or sites, in view of their conservation objectives.
- 7.5.5. I therefore consider it is reasonable to conclude on the basis of the information on file, which I consider to be adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on a European site.

8.0 Recommendation

- 8.1. I recommend that planning permission be **refused**. The Board may consider the first reason and consideration relates to a new issue based on the Planning Authority considering the applicant in this case demonstrated a local need for a one-off rural dwelling.

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, and in the Louth County Development Plan, 2021-2027, by way of its Rural Policy Zone 2, where housing is restricted to persons demonstrating local need in accordance with the Table 3.5, it is considered that the applicant does not come within the scope of the housing need qualifying criteria for a rural one-off dwelling house at this location.

In addition, the site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need.

Further, having regard to National Policy Objective 19 of the National Planning Framework (February 2018) which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside, based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements, it is considered that the applicant has not demonstrated compliance with National Policy Objective 19 and the local need qualifying criteria set out under Table 3.5 of the Development Plan.

The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural car dependent development in an area where there is a strong proliferation of such developments.

It would also contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and would therefore be contrary to the local and overarching provisions of national policy, and would, therefore, be contrary to the proper planning and sustainable development of the area

2. Having regard to the pattern of development in the vicinity, and to the means of wastewater disposal proposed, it is considered that the proposed development would add to a proliferation of septic tanks and individual wastewater treatment systems in an area which is identified by the Environmental Protection Agency as an area of extreme vulnerability and with a groundwater R2¹ groundwater protection response.

Such areas are under very high risk of pollution from domestic wastewater systems.

The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector - 24th day of January, 2022.