



An
Bord
Pleanála

Inspector's Report

ABP-311220-21

| | |
|-------------------------------------|--|
| Development | Construction of house with garage, wastewater treatment system, sand polishing area, vehicular entrance and associated site works. |
| Location | Rath, Riverstown, Dundalk, Co. Louth. |
| Planning Authority | Louth County Council. |
| Planning Authority Reg. Ref. | 21/721. |
| Applicant | Brian Savage. |
| Type of Application | Planning Permission. |
| Planning Authority Decision | Refused. |
| Type of Appeal | First Party. |
| Appellant | Brian Savage. |
| Observer | None. |
| Date of Site Inspection | 29 th day of December, 2021. |
| Inspector | Patricia-Marie Young. |

Contents

| | |
|--|----|
| 1.0 Site Location and Description | 3 |
| 2.0 Proposed Development | 3 |
| 3.0 Planning Authority Decision | 4 |
| 3.1. Decision | 4 |
| 3.2. Planning Authority Reports | 5 |
| 3.3. Prescribed Bodies | 6 |
| 3.4. Third Party Observations | 6 |
| 4.0 Planning History..... | 7 |
| 5.0 Policy & Context | 7 |
| 5.1. National..... | 7 |
| 5.3. Development Plan..... | 7 |
| 5.4. Natural Heritage Designations | 9 |
| 5.5. EIA Screening | 9 |
| 6.0 The Appeal | 10 |
| 6.1. Grounds of Appeal | 10 |
| 6.2. Planning Authority Response | 11 |
| 7.0 Assessment..... | 11 |
| 8.0 Recommendation..... | 25 |
| 9.0 Reasons and Considerations..... | 25 |

1.0 Site Location and Description

- 1.1. The 0.51ha appeal site is located c4.3km to the south of Carlingford village and c14km to the east of Dundalk town, as the bird would fly, in the Townland of 'Rath Lower' in north County Louth. The site forms part of a larger field in use for grazing horses on the foothills of the Cooley Mountains.
- 1.2. It is access via a private driveway that provides gated access to a detached dwelling house as well as the field the site forms part of. This driveway connects at its southernmost end to a cul-de-sac lane that provides access to the heavily trafficked R173, c245m to the south west from the site.
- 1.3. This cul-de-sac lane has a restricted width, is poorly surfaced and has an undulating horizontal alignment. It mainly serves a number of other one-off dwellings.
- 1.4. By road the site lies c500m to the north east of the heavily trafficked R171 which provides connection to M1 to the west as well as the villages of Carlingford and Greenore to the east.
- 1.5. The surrounding area though rural in its predominant character contains a proliferation of one of detached dwellings as well as a number of commercial and other land uses in the general location of the R173 and R171 junction.

2.0 Proposed Development

- 2.1. Planning permission is sought for the construction of a single storey detached dwelling (GFA 144.5m²) with single storey detached garage (GFA 25m²), waste water treatment system, sand polishing area, a new vehicular entrance onto a shared vehicular entrance and all associated site development works as well as services.
- 2.2. According to the documentation on file the proposed dwelling is located to the east of a proposed driveway that would serve it and a concurrent proposed dwelling house application that is before the Board for determination under ABP.311223.21. The dwelling subject of appeal case ABP.311223.21 bounds the northern boundary of this subject site. With the driveway running along the western boundary of the appeal site but outside the red line area. In addition, the waste water system's perforated infiltration pipe is located to the south west and the soil polishing filter bed is located to the south east of the dwelling.

2.3. This application is accompanied by but not limited to:

- Site Characterisation Report.
- Waste Water & Stormwater Reports.
- Letter of Consent from Landowner.

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 development for the following stated reasons:

- “1) *The site of the proposed development is located within Development Zone 5 of the Louth County Development Plan 2015 – 2021. It is the policy of the Plan that applicants for single dwellings in this zone document that they have a rural housing need, they do not already own a house or have not owned a house within the rural area of the County for a minimum of 5 years prior to making an application. Based on the information submitted the applicant has failed to demonstrate, to the satisfaction of the planning authority that they have a rural housing need and as such the proposed development would contravene the rural housing policy of the Louth County Development Plan 2015-2021 and would be contrary to the proper planning and sustainable development of the area.*
- 2) *The proposed development, by reason of its location would constitute an inappropriate form of ad hoc piecemeal development and an intrusive encroachment of physical development into the open rural landscape. The proposed development would militate against the preservation of the rural environment and would set an undesirable precedent for other such development in the vicinity. Such development would be contrary to 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.*

- 3) *The proposed development seeks the intensification of an existing access onto the R173 Regional Route. It is the policy of the Louth County Development Plan 2015-2021 that visibility sightlines of 125m x 0.6m – 1.05m x 3m are required in both directions at the proposed entrance. The applicant has failed to demonstrate to the satisfaction of the Planning Authority that the required sightlines can be achieved at the proposed entrance and as such the proposed development materially contravenes Policy TC 12 of the Louth County Development 2015-2021 and would endanger public safety by reason of the traffic hazard.*
- 4) *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. The proposed development would therefore materially contravene Policy SS65 of the Louth County Development Plan 2015-2021 and would be prejudicial to public health.*
- 5) *It is the policy (HER 3 and HER 5) of the Louth County Development Plan 2015-2021 to ensure that all proposed developments comply with the DECLG “Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities 2010” and that any plans or projects that would have a significant adverse impact (either individually or in combination with other plans and projects) upon conservations objectives of any Natura 2000 site will not be permitted. The applicant has failed to demonstrate to the satisfaction of the Planning Authority that the proposed development will not have a negative impact on the Natura 2000 sites in the area in the area and as such, the proposal contravenes the policy of the Louth County Development Plan 2015-2021 and thus would be contrary to the proper planning and sustainable development of the area.”*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Authority’s Planning Officer’s report, dated the 22nd day of July, 2021, is the basis of their decision. It includes the following comments:

- From the information submitted it is not possible to say that the proposed development will not have an adverse impact upon Natura 2000 sites.
- The information submitted with this application fails to satisfy that the applicant meets the requirements for a rural dwelling house at this location under the either Category 1 or 2.
- The land registry map provided indicates a family landholding of 4.473ha owned for more than 10 years.
- The site is accessed of a scenic route.
- The site will have more than sufficient sized area for recreational and domestic purposes.
- The proposed development would add to the *ad hoc* and piecemeal type development in this area. Which would in turn add to adverse visual impacts of such developments in this rural area.
- The proposed development would result in an undesirable precedent.
- The proposed development would not give rise to adverse residential amenity impacts.
- No details have been provided in relation to access onto the R173.
- The site is not at risk of flooding.
- Concludes with a recommendation of refusal.

3.2.2. Other Technical Reports

Environment: Additional information sought.

Infrastructure: Additional information sought.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Relevant Site and Setting

- 4.1.1. There is a concurrent appeal case with the Board on adjoining land for a one-off dwelling, i.e. ABP.311223.21, which is of a similar design and layout to that sought under this application.

5.0 Policy & Context

5.1. 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.

5.2. Regional

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

5.3. Development Plan

- 5.3.1. 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 it would appear that the site is located within a transition zone between Rural Policy Zone 1 and Rural Policy Zone 2 with the site appearing be just inside the perimeter of 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.
- 5.3.2. 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".

- 5.3.3. 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"*.
- 5.3.4. 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'"*.
- 5.3.5. 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."*
- 5.3.6. 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"*.
- 5.3.7. 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.
- 5.3.8. 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"*.
- 5.3.9. 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"*.

5.4. Natural Heritage Designations

5.4.1. The following Natura 2000 sites are in the wider vicinity of the site:

- Carlingford Mountain SAC (Site Code: 000453) is situated c1.1km to the north of the site at its nearest point.
- South Dundalk Bay SPA (Site Code: 000455) is situated c2.7km to the south west of the site at its nearest point.
- Dundalk Bay SPA (Site Code: 004026) is situated c2.9km to the south west of the site at its nearest point.
- Carlingford Lough SPA (Site Code: 004078) is situated c3.8km to the north east of the site at its nearest point.
- Carlingford Shore SAC (Site Code: 002306) is situated c3.9km to the north 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. However, the development is significantly below the threshold for the class and comprises a modest development on none serviced lands consisting of the provision of a new dwelling house with the subject land removed from any sensitive site. Whilst surface water and wastewater will be discharged on site, neither will be of a scale to give rise to significant environmental effects on the environment. Having regard to the above, 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

6.1.1. The grounds of this first party appeal were submitted by Mr. Brian Savage with an address of St. James Terrace, Clonskeagh Road, in County Dublin and can be summarised as follows:

- The Planning Authority's decision to refuse was not fair or was the application dealt with professionally by the Planning Authority.
- The appellant contends that they are embedded in the fabric of this rural locality and that they are very conscious of the environment, heritage and traditions.
- There was no opportunity given to them to address any of the Planning Authority's concerns in relation to this application prior to making the decision.
- The appellant currently lives in Dublin in rented accommodation but state that they were born, bred and educated in the area.
- The appellants intention is to move back to live in the proposed dwelling.
- Previously permissions have been granted by the Planning Authority with access onto the same road under P.A. Ref. No.s 18/808, 18/766 and 15/460.
- This development is compliant with local planning provisions.
- The location of the proposal is on a 7ha family landholding and the more restrictive Development Zone 2 land was avoided.
- The family landholding has been in the appellants family's landownership for almost 30yrs.
- There is clear visibility of 300m in the Carlingford direction and 194m in the Dundalk direction at the entrance onto the R173.
- The Planning Authority's decision was pre-determined.
- Procedural concerns are raised in relation to the decision making by the Planning Authority.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response, which is dated the 8th day of September, 2021, includes the following comments.

- The appellant was denied a chance to submit further information as it was considered that the request to do so would conflict with the Development Management Guidelines for Planning Authorities, June, 2007, which sets out the applicants should not have to suffer unnecessary delay or expense if a refusal is likely.
- Though further information was requested by the Environmental and Roads Sections it would have been unreasonable to have requested this information considering that the application would still be refused on grounds of its inappropriate location.
- The appellants submission to the Board contains no materially new information that would warrant a reversal of their decision.
- Whilst further information may have addressed concerns regarding the waste water treatment and consequently the AA screening, given the absence of a rural housing need and the location as well as siting of the dwelling these are matters that could not be addressed. Therefore, a refusal was recommended.
- The Board is requested to uphold its decision.

7.0 Assessment

7.1. Overview

7.1.1. Having carried out an inspection of the site, alongside having examined all the documentation on file together with having regard to all relevant planning provisions local through to national level, I consider that the substantive matter for the Board in this appeal case is the extent to which the proposed development complies with the policies for one-off rural housing on land zoned Rural Policy Zone 2 rural area under strong urban influence, and as part of a rural setting identified as significant landscape scenic quality. In relation to the zoning of the land at this locality as being under strong urban influence this I consider is reasonable given that this is consistent with

the Sustainable Rural Housing Guidelines, (2005), which similarly identifies this area and indeed all of rural County Louth to being a 'Rural Area under Strong Urban Influence'.

7.1.2. In relation to this matter and of relevance to this particular appeal case the National Planning Framework, under National Policy Objective 19, requires developments like that sought under this application, to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence. With such applications also being subject to siting and design considerations. I therefore propose to deal with this matter in my main assessment below.

7.1.3. Having regard to the single storey design and siting of the proposed development, I note the following factors:

- 1) The location of the site on rural land designated Rural Policy Zone 2 and an un-serviced rural location area identified as being under strong urban influence.
- 2) The location of the site in the Cooley Mountains foothills and visibility to the site from higher vantage points including Carlingford Mountain SAC and being in area identified under Table 8.15 of the Development Plan of High Scenic Quality.
- 3) The pattern of development in the area which includes a strong proliferation of one-off houses outside defined settlements.
- 4) The concurrent appeal case with the Board (ABP. 311223.21) which is made by the appellants brother and who is also seeking planning permission for a one-off rural dwelling on a site bounding the northern boundary of the appeal site.
- 5) The requirement for a new access connecting to an existing private driveway/cul-de-sac access, outside of the site area to serve both the dwelling sought under this application and that sought under the concurrent appeal case ABP.311223.21 before the Board. With this access extending along the western side of both sites in an exposed rural landscape setting identified as being of significant landscape scenic quality. Alongside such an access opening up this parcel of agricultural land for future such developments.

- 7.1.4. Despite the single storey nature of the proposed dwelling and garage that, if permitted, even if robust landscaping and a more qualitative palette of materials were required and implemented as part of any construction as well as properly maintained. These measures would not be sufficient to screen this proposed development at such a visible rural locality on the foothills of the Cooley Mountains. Therefore, the proposed development would be contrary to Section 8.12.2 of the Development Plan, which sets out that areas like that of the site's setting are protected from excessive development. It also states: "*particularly from inappropriate, one-off, urban-generated housing, in order to preserve their unspoiled rural landscapes*" and of note Policy Objective NBG 37 of the Development Plan also seeks to: "*protect the unspoiled rural landscapes of the Areas of High Scenic Quality (AHSQ) from inappropriate development for the benefit and enjoyment of current and future generations*".
- 7.1.5. I note that Section 13.9.7 of the Development Plan in some instances requires visual impact assessments for proposals within sensitive areas. No such appraisal was provided with this application.
- 7.1.6. In my view the appellant as part of their appeal submission has not sought to address in a meaningful manner the visual amenity concerns raised by the Planning Authority in their notification to refuse planning permission. Notably the second refusal reason which specifically raises substantive visual amenity concerns.
- 7.1.7. Based on the above considerations I concur with the Planning Authority that in this case the proposed development would constitute an intrusive encroachment of physical development into open rural landscape in a manner that would militate against its preservation.
- 7.1.8. I also consider that there is merit that the proposed development would set an undesirable precedent by way of further encroachment of one-off rural dwellings in the rural landscape and would further detract from the rural character of its landscape setting.
- 7.1.9. Moreover, the visual obtrusiveness of the proposed development would, in my view, be added to by the proposed access road outside of the site area which is required to ultimately provide access to the public road network. With no visual screening proposed to help assimilate this new access road into its rural landscape and with this piece of infrastructure situated outside of the redline area of the site.

- 7.1.10. In relation to the reasons for refusal set out by the Planning Authority in their notification to refuse planning permission, in particular reason number four, I make the following comments.
- 7.1.11. At the time of my site inspection access to the site was restricted and it was apparent that the trial holes were no longer open. The field was being in use for grazing. I could find no record of flooding at this location from the OPW flood mapping sources. I did observe very high levels of flowing water in the deep drainage ditches in the immediate vicinity of the site with the ground in the immediate area of the gate serving the field itself being heavy and spongy underfoot.
- 7.1.12. In relation to this matter the Environment Section concluded in their report dated the 25th day of June, 2021, whilst raising no flooding concerns did consider the information provided with this application lacking sufficient clarity on ground water risk; it lacked details of the person who would supervise the installation of the effluent treatment system and percolation area and raised concerns that the sand polishing details were inadequate. They therefore concluded that further information was requested in order to assess the proposed development.
- 7.1.13. The appellant has not provided any further details on this matter with their appeal submission to the Board that would demonstrate that these concerns could be overcome.
- 7.1.14. Nor have they provided sufficient clarity that the proposed development would be served by a safe qualitative potable water supply and that the manner in which the wastewater treatment systems would be provided would be to a standard that assured that it would not contaminate ground water.
- 7.1.15. This is of concern as there is no potable water supply serving this immediate locality and/or a group water scheme.
- 7.1.16. Together with the fact that the developments in its vicinity appear to be dependent upon proprietary waste water treatment systems.
- 7.1.17. Moreover, the appellant in his appeal submission to the Board indicate that he was not given an opportunity to demonstrate that the proposed waste water treatment system would comply with the EPA Code of Practice, 2009. I note to the Board that this EPA

Code of Practice was superseded in 2021 prior to this application being made to the Planning Authority.

- 7.1.18. I also note to the Board that the fourth reason for refusal raised concern that in the absence of demonstration to the satisfaction of the Planning Authority that the Wastewater Treatment System serving the proposed dwelling complying with the 2009 EPA Code of Practice that the proposed development would materially contravene Policy SS 65 of the previous Development Plan.
- 7.1.19. As set out previously in this report the Development Plan under which the Planning Authority determined this application has been superseded and therefore the Boards de novo determination of the proposed development has to be based on the relevant local planning provisions that are applicable at the time.
- 7.1.20. Under the new Development Plan Section 10.2.2 sets out that all wastewater, including domestic, that ultimately discharges to water, is subject to the provision of well maintained quality wastewater treatment infrastructure with this being essential to facilitate sustainable development in the County, while also protecting the environment and public health.
- 7.1.21. In addition, I am cognisant that Policy Objective IU 16 of the Development Plan requires: *“that proper supervision, installation and commission of on-site waste water treatment systems by requiring site characterisation procedures and geotechnical assessment be carried out by competent professionally indemnified and suitably qualified persons”* and Policy Objective IU 17 requires: *“that the construction and installation of all wastewater treatment systems are supervised and certified by a suitably qualified competent person as fit for the intended purpose”*.
- 7.1.22. Moreover, the Development Plan further sets out under Policy Objective IU 18: *“to require that private wastewater treatment systems for individual houses where permitted, comply with the recommendations contained within the EPA Code of Practice Domestic Waste Water Treatment Systems, Population Equivalent ≤ 10 (2021)”*.
- 7.1.23. This updated code of practice is more robust in its requirements and as set out by the Planning Authority’s Environmental Section the information provided is inadequate to demonstrate this. Particularly in terms of ground water.

- 7.1.24. 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.
- 7.1.25. This application was lodged with the Planning Authority on the 9th day of June, 2021.
- 7.1.26. Given that the information on file and that on appeal fails to demonstrate the required policy objectives for the provision of on-site waste water treatment systems I concur with the Planning Authority in the conclusions they made under the fourth reason of refusal that the proposed development would, if permitted, be prejudicial to public health.
- 7.1.27. On the matter of road safety and Appropriate Assessment I propose to deal with these matters in turn in my main assessment below.
- 7.1.28. Prior to the commencement of my main assessment, the appellant as part of their grounds of appeal submission raise concern with regard to the Planning Authority's handling of this application. On this matter for clarity I note that the Board does not have an ombudsman role on such matters and in relation to the appellants concerns that they were not given the opportunity to address the Planning Authority's concerns by way of further information.
- 7.1.29. On this matter I am cognisant that there are legislative provisions under Article 33 of the Planning and Development Regulations, 2001, as amended, that sets out provisions for the Planning Authority to request further information where it has insufficient information to enable it to make a determination.
- 7.1.30. In addition, 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*".
- 7.1.31. As set out under Section 7.2 of my assessment below it is clear that the applicant in this case has failed to demonstrate that they meet the required qualifying criteria for a

one-off rural dwelling house at this rural locality and there is no material evidence provided by them to the contrary that would change this conclusion. In such cases there is a fundamental and substantive reason as to why the principle of the proposed development is not acceptable and had the Planning Authority requested information recommended by their Environmental Section and Infrastructure Section this would not have been overcome.

7.1.32. In this case I consider that it was appropriate and reasonable for the Planning Authority not to have sought further information as it would have undoubtedly delayed their making of a determination on this application and would have resulted in additional unnecessary costs to be burdened by the applicant when refusal of planning permission was highly probable.

7.2. Principle of the Proposed Development

7.2.1. The Development Plan has a presumption against one-off rural housing at rural locations identified as being under strong urban influence except in cases where the applicant can demonstrate they meet the qualifying criteria. In this case the applicant is subject to demonstrate that they meet the one of the qualifying criteria set out under Table 3.5 of the Development Plan for Rural Policy Zone 2 and under strong urban influence.

7.2.2. Having regard to the various criteria set out under Table 3.5 of the Development Plan it would appear that the only two of the listed criteria may be relevant to the applicant's particular circumstances are the qualifying criteria 3 and/or 4.

7.2.3. Under criteria 3 it states that the: *“landowners including their sons and daughters who have demonstrable social or economic ties to the area where they are seeking to build their home. Demonstrable social or economic ties will normally be someone who has resided in the rural area of Louth for at least 18 years prior to any application for planning permission. Any applicant under this category must demonstrate a rural housing need and shall not own or have sold a residential property in the County for a minimum of 10 years prior to making an application”*.

7.2.4. Under criteria 4 in relation to the applicant it states: *“person who is seeking to build their first house in the area and has a demonstrable economic or social requirement to live in that area. Social requirements will be someone who has resided in the rural area of Louth for at least 18 years prior to any application for planning permission. Any*

applicant under this category must demonstrate a rural housing need and shall not own or have sold a residential property in the County prior to making an application”.

- 7.2.5. Based on the information provided on file, the applicant in this case resides and works in Dublin living in rented accommodation. Accompanying their planning application is a letter of support from Senator Erin McGreehan which indicates that the applicant is employed in his wife’s architectural practice (further details on file indicate that the practice is StudioAND with it being based at a location in Clonskeagh Road, Dublin); and, that they have recently returned to Ireland after living in Argentina; a Birth Certificate for the applicant with the dwelling of his father indicated as Glenmore, Riverstown, Dundalk; through to a letter from the principal of Scoil Naomh Mhuire, Boher, Muchgrange, Greenore, indicating the applicants attendance between the years of 1985 and 1993.
- 7.2.6. As part of the appellants appeal he indicates that they are part of a family embedded in the fabric of the area and that they are born, bred as well as educated in the area. They indicate that they could have readily supplied further information. In saying so it is of note that their submission to the Board has not provided any new evidence to support that they have a demonstratable social or an economic need to live the area.
- 7.2.7. Of concern the applicant has not demonstrated a social or an economic need to live in the area which is a pivotal requirement of criteria 3 and 4 of Table 3.5 of the Development Plan for an applicant to be considered for a rural one off dwelling on land subject to Policy Zone 2.
- 7.2.8. I also consider it incumbent to make comment on this case on criteria 5 of Table 3.5 of the Development Plan, the applicant in this case is not an emigrant who wishes to return from abroad to live in this rural locality with them as already mentioned living and working in Dublin. Therefore they do not qualify for a one-off dwelling under this particular criteria.
- 7.2.9. It is a policy objective of the Development Plan under HOU 36 to discourage urban generated housing in rural areas as well as direct such proposal to towns and settlements 1 to 4 in the County as set out in the Settlement Hierarchy in Table 2.4.
- 7.2.10. In addition, 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, which in this case is Table 3.5.

- 7.2.11. In terms of national planning guidance the site's location in an area of strong urban pressure under the Development Plan is consistent with Sustainable Rural Housing Guidelines for Planning Authorities, 2005, which similar identifies the site and its setting as one that is under strong urban pressure.
- 7.2.12. In addition, I note that the Regional Spatial Economic Strategy – Eastern & Midland Region, 2019-2031, under RPO 4.80 sets out that Local Authorities shall manage 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.
- 7.2.13. In relation to 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.
- 7.2.14. It also indicates that such applications shall be also subject to siting and design considerations.
- 7.2.15. As discussed, Section 7 of this report there are other substantive siting, design, servicing, infrastructural through to environmental concerns arising out of the proposed development that the appellant either by way of the information provided with their application and on appeal to the Board fails to overcome.
- 7.2.16. Whilst the applicant appears to have a desire as opposed to a need to live in this rural location this in itself does not override the necessity to meet local through to national planning provisions which seek to safeguard such rural locations from the proliferation of urban generated housing. 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.

- 7.2.17. There are settlements within the wider location, including those with infrastructural services such as mains drainage and potable water through to other services as well as amenities, where there is capacity to absorb additional residential development in a sustainable manner than at this location. In such locations dwellings are less reliant on use of private vehicles which in turn results in a more climate resilient residential development.
- 7.2.18. In addition within the boundaries of such settlements such developments are unlikely to result in significant diminishment of the visual amenities of an area of County Louth whose rural countryside is recognised and provided protection as Areas of High Scenic Quality.
- 7.2.19. 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 and national policy framework for rural one-off housing. I therefore concur with the Planning Authority in their first reason for refusal and I consider that this concern is of sufficient basis to warrant the refusal of the proposed development.

7.3. Roads

- 7.3.1. The Planning Authority's third reason for refusal as set out in their decision notification considered that as the proposed development failed to demonstrate that visibility sightlines of 125m x 0.6m – 1.05m x 3m in both directions at the proposed entrance onto the R173 that to permit the proposed development would be contrary to Policy TC12 of the previous Development Plan.
- 7.3.2. The appellant has not demonstrated by way of their appeal submission that this is not the case. They have provided no professionally prepared drawings based on an actual detailed examination of the entrance and the adjoining stretch of the R173 that this is not the case. But yet they indicate that there is visibility of 300m in the Carlingford direction and 194m in the Dundalk direction. Having inspected the entrance of what is a substandard in width and poorly surface cul-de-sac road that serves several one-off rural dwellings as well as agricultural land that connects onto the heavily trafficked R173 I do not accept that the applicant is correct in their assertions that the sightlines are as generous as they state. Particularly in the Dundalk direction.
- 7.3.3. There is a necessity for an applicant to demonstrate the required sightlines set out under Table 13.13 of the Development Plan. In this case the applicant has not. This

concern is added to by the substandard nature of the cul-de-sac road and the number of accesses dependent upon it for access onto the public road network.

- 7.3.4. Moreover, Section 2.5 and 2.6 of the DoECLG's publication Spatial Planning and National Roads – Guidelines for Planning Authorities, (2012), respectively seek to avoid increasing traffic outside of the 60kmph posted speed limit and only permit access onto regional roads where the characteristics make them suitable.
- 7.3.5. In this regard I note that the posted speed limit of the stretch of regional road upon which access to the public road network is dependent upon is 80kmph. Further the entrance opens onto a point where this regional road has a significant bend. Whereby movements such as the access and egress from this entrance onto this stretch of road has the potential to give rise to potential conflict for road users including vulnerable road users given the absence of provision for these road users.
- 7.3.6. The additional volume of traffic of the proposed development whilst modest in volume would notwithstanding be contrary to Table 13.13 of the Development Plan. Arguably it would also be contrary to Section 2.5 and 2.6 of the DoECLG's publication Spatial Planning and National Roads – Guidelines for Planning Authorities, (2012).
- 7.3.7. Based on the above considerations I am not satisfied that the existing driveway, the cul-de-sac lane, and the entrance onto the R173 is of a design that has the capacity to safely accommodate the additional traffic this development would generate without giving rise to additional road safety and traffic hazards for existing road users. Particularly in terms of the entrance onto the R173 where the applicant has failed to demonstrate the required sightlines and also along the length of the cul-de-sac prior to the entrance onto the R173 which is of a substandard nature and already serves a number of substantial one-off detached dwellings as well as farmland.
- 7.3.8. For these reasons I consider I concur with the Planning Authority's third reason for refusal in that the proposed development, if permitted, would give rise to road safety and traffic hazards. Particularly, by virtue of the applicant failing to demonstrate that the required sightlines can be achieved at the proposed entrance onto the public road. But also due to the substandard nature of the access serving the development to the entrance onto the public road.

7.4. **Appropriate Assessment**

- 7.4.1. The requirements of Article 6(3) of the Habitats Directive, as related to screening the need for Appropriate Assessment of a project under Part XAB (section 177U) of the Planning and Development Act 2000 (as amended), are considered fully in this assessment.
- 7.4.2. I first of all note that the fifth reason for refusal in the Planning Authority's notification to refuse planning permission was on the basis that under the previous Development Plans policies HER 3 and HER 5 all proposed developments are required to comply with the DECLG 'Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities 2010' and that any plans or projects that would have a significant adverse impact (either individually or in combination with other plans and projects) upon the conservation objectives of any Natura 2000 site will not be permitted.
- 7.4.3. The Planning Authority under this reason for refusal considered that the applicant had failed to demonstrate to their satisfaction that the proposed development will not have a negative impact on the Natura 2000 sites in the areas and as such the proposal would contravene the aforementioned Development Plan policies as well as would be contrary to the proper planning and sustainable development of the area.
- 7.4.4. Secondly, the Development Plan referred to by the Planning Authority in their fifth reason for refusal has been superseded by the Louth County Development Plan, 2021-2027.
- 7.4.5. Of note this Development Plan under Section 8.3 sets out that all projects and plans will be screened for the need to undertake Appropriate Assessment under Article 6 of the Habitats Directive and that: *"a plan or project will only be authorised after the competent authority has ascertained, based on scientific evidence, screened for AA and subsequent AA where necessary" ... "it will not give rise to significant direct, indirect or secondary effects on the integrity of any European site either individually or in combination with other plans or projects"*.
- 7.4.6. In addition, the Development Plan includes the following policy objectives:
- NBG 3: *"To protect and conserve Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) designated under the EU Habitats and Birds Directive"*.

NBG 4: *“To ensure that all proposed developments comply with the requirements set out in the DECLG ‘Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities 2010’.*

NBG 5: *“To ensure that no plan, programme, or project giving rise to significant cumulative, direct, indirect or secondary impacts on European sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction operation, decommissioning of from any other effects shall be permitted on the basis of this Plan, either individually or in combination with other plans, programmes or projects”.*

7.4.7. Thirdly, the Planning Authority’s Planning Officer in their report carried out an Appropriate Assessment of the proposed development under Section 11. With this considering the following Natura 2000 sites:

- Carlingford Mountains SAC (Site Code: 000453)
- Carlingford Shore SAC (Site Code: 002306)
- Dundalk Bay SAC/pNHA (Site Code: 000455)
- Carlingford Lough SPA (Site Code: 004708)
- Dundalk Bay SPA/pNHA (Site Code: 004026)
- Rostrevor Wood SAC (Site Code: 0030268).

7.4.8. With the report indicating that at the nearest was Carlingford Mountains SAC at 600m and at the furthest Rostrevor Wood SAC at 10.4km from the site. Their report concluded that based on the inadequate information submitted to ensure that no environmental threat of pollution from the proposed developments waste water treatment system it is not possible to say at this stage that the proposed development will not have an adverse impact upon the conservation objectives of the aforementioned Natura 2000 sites.

7.4.9. Fifthly, I note to the Board that no screening assessment has been submitted with this application. The appellant in the appeal submission contending that this matter should have been dealt with by way of further information. Their appeal submission does not provide a screening assessment or indeed any other new material information based

on best scientific evidence in terms of refuting that the fifth reason of refusal given by the Planning Authority in their decision notification is without foundation.

7.4.10. Sixthly, it is reasonable, in my view to conclude that on the basis of the information on the file, which I consider is inadequate in order to issue an informed screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on any Natura 2000 site in view of their conservation objectives, either individually or in combination with other plans or projects.

7.4.11. In the absence of adequate information based on scientific evidence it is not possible to carry out a Stage 1 Appropriate Assessment in a manner consistent with the provisions set out under Article 6 of the Habitats Directive. It is therefore not possible to conclude with absolute certainty that the proposed development, if permitted in the manner proposed, will not give rise to significant direct, indirect or secondary effect on the integrity of any European site either individually or in combination with other plans or projects at a location where waste water treatment is dependent upon proprietary treatments, where the nearest such site susceptible to ground water contamination is Dundalk Bay SPA and Dundalk Bay SAC are situated between c2.7km and c2.9km to the south west downhill of the site at its nearest point respectively alongside the drainage patterns, the saturation of the ground evident on the day of site inspection and the proliferation of developments dependent upon proprietary waste water treatments in this locality.

7.4.12. Further, the documentation on file does not demonstrate that the proposed development would comply with the current required EPA Code of Practice standards.

7.4.13. In relation to Carlingford Mountain SAC which has a lesser lateral separation distance to the site given that this site is designated to protect special areas of conservation habitat and lies uphill from the site it is not probable that the proposed development, if permitted, would give rise to any adverse impact upon its conservation objectives.

7.4.14. Based on the above considerations, the precautionary approach is appropriate and reasonable based upon the absence of demonstration of certainty by the applicant in the documentation provided with this application that the proposed development will not give rise to significant direct, indirect or secondary effects on the integrity of any European Site either individually or in combination with other plans or projects. To

permit the proposed development would be contrary to Policy Objectives NBG 3; NBG 4 and NBG 5 of the Development Plan. As such I consider the Planning Authority's fifth reason for refusal is with basis.

8.0 Recommendation

8.1. I recommend that planning permission be **refused**. While I note that the Planning Authority's notification for refusal contained 5 reasons for refusal I consider that the following three reasons and considerations are substantive in their own right to support the refusal of planning permission in this case.

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, 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 militate against the preservation of a rural environment that is afforded protection as an area of high scenic quality where inappropriate developments like this are discouraged and directed to where they can be more sustainably accommodated on serviced lands within settlements making more efficient use of provision of public services and infrastructure.

At such locations, proposed developments like that sought under this application have less potential to give rise to adverse visual impacts on the visual amenity of the open countryside and at such locations they accord with National Policy Objectives 3a as well as National Policy Objective 33 of the National Planning Framework which seeks to direct residential development to the built-up footprint of existing settlements, at locations that can support sustainable development and at an appropriate scale of provision relative to location.

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 having regard to the documents submitted with the appeal submission, the Board 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 the designated Special Protection Areas: Dundalk Bay SPA (Site Code: 004026) and Special Conservation Area: Dundalk Bay SAC (Site Code: 000455), or any other European site, in view of their Conservation Objectives. In these circumstances the Board is precluded from giving further consideration to a grant of planning permission. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.
3. It is considered that the proposed development would endanger public safety by reason of traffic hazard because of its dependence upon access of a substandard in width, alignment, surface cul-de-sac road that serves along its length serves several dwelling houses as well as a small number of agricultural parcels of land and because of this cul-de-sac road opening onto the R173 regional road at a point where the posted speed limit is 80kph, where this regional road has a curving

alignment and where the applicant is unable to demonstrate the required sightlines set out under Table 13.13 of the Development Plan.

The intensification of turning movements onto the R173 and from the R173 in both directions would endanger public safety by reason of a traffic hazard, it would interfere with the free flow of traffic on this regional road in a manner that would compromise its level of service and carrying capacity.

It is, therefore, considered that the additional and conflicting turning movements generated by the proposed development at the private lanes entrance onto the R173 would endanger public safety by reason of traffic hazard and would fail to protect public investment in the national road network, both by itself and by the undesirable precedent it would set for similar such developments. It would also be contrary to said planning provisions, and would, therefore, be contrary to the proper planning and sustainable development of the area.

Patricia-Marie Young
Planning Inspector

31st day of January, 2022.