



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311281-21

#### Development

Retention permission is sought for single storey dwelling behind family home, utilising existing vehicular entrance. Planning permission is also sought for on-site wastewater treatment unit and percolation area together with all associate site works.

#### Location

Drishoge, Oldtown, Co Dublin, A45 K718.

#### Planning Authority

Fingal County Council.

#### Planning Authority Reg. Ref.

F21A/0337.

#### Applicant(s)

Aoife Parkinson.

#### Type of Application

Retention Permission & Planning Permission.

#### Planning Authority Decision

Refused.

#### Type of Appeal

First Party.

#### Appellant(s)

Aoife Parkinson.

#### Observer(s)

None.

#### Date of Site Inspection

28<sup>th</sup> 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 .....	3
3.1. Decision.....	3
3.2. Planning Authority Reports.....	4
3.3. Prescribed Bodies.....	6
3.4. Third Party Observations.....	6
4.0 Planning History.....	6
5.0 Policy & Context.....	7
5.1. Local Planning Context.....	7
5.2. Regional .....	9
5.3. National .....	9
5.4. Natural Heritage Designations.....	10
5.5. EIA Screening .....	10
6.0 The Appeal.....	11
6.1. Grounds of Appeal .....	11
6.2. Planning Authority Response .....	11
7.0 Assessment.....	12
8.0 Recommendation.....	22
9.0 Reasons and Considerations .....	22

## 1.0 Site Location and Description

- 1.1. This appeal site has a stated 0.3ha and is located in the Townland of Drishoge on a backland site to the rear of a single storey detached dwelling on the eastern side of a local road c2.4km to the south east of Oldtown, as the bird would fly, in rural north County Dublin. The site contains an existing single storey dwelling that is accessed from the public road by way of a shared access that serves the dwelling that is located between it and the local road. The surrounding area through rural in function has a strong proliferation of one-off detached dwellings.

## 2.0 Proposed Development

- 2.1. By way of this application retention permission is sought for single storey dwelling with a stated 98 sq. m. gross floor space, and which is located behind the applicant's family home, the shared use of an existing vehicular entrance together with all associated works carry out in relation to the same. In addition, planning permission is also sought for on-site wastewater treatment unit and percolation area together with all associate site works.

## 3.0 Planning Authority Decision

### 3.1. Decision

- 3.1.1. On the 9<sup>th</sup> day of August, 2021, the Planning Authority issued a notification to **refuse** retention permission and planning permission for the development sought under this application. The stated reasons read as follows:

*"1. The site is located with the 'RU' zoning objective under the Fingal Development Plan, 2017 – 2023, the objective of which is 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage', and in a 'Rural Area under Strong Urban Influence' in the Sustainable Rural Housing Guidelines for Planning Authorities' (DoEHLG, 2005). Furthermore, it is national policy in such rural areas under urban influence, as set out in National Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018, to facilitate the provision of*

*single housing in the countryside, based on the core consideration of demonstratable economic or social need to live in such rural areas under urban influence. The eligibility criteria set out under Objective FR39 (i) stipulates that an applicant may be considered under close family ties criteria for a rural dwelling where permission has not already been granted to a family member by reason of close family ties since 19th October 1999. As the applicant's brother was permitted a dwelling within the rural area of Fingal under Reg. Ref. F01A/1031 by way of close family ties criteria with the final grant for this permission issued on the 17<sup>th</sup> January 2002, the applicant is not eligible to be considered for a dwelling in the rural area of Fingal in accordance with Objective RF39(i) of the Fingal Development Plan 2017 – 2023. The applicant has therefore not demonstrated their eligibility to be considered for a dwelling in the rural area of Fingal on the basis of close family ties. The proposal would contravene materially the rural settlement strategy of the Fingal Development Plan 2017-2023 including Objective RF39(i), would be contrary to the Ministerial Guidelines and to the over-arching national policy in the National Planning Framework. The proposal would, therefore, be contrary to the proper planning and sustainable development of the area.*

2. *In its present format the proposal by reason of inadequate sightlines would endanger public safety by reason of traffic hazard. The proposal would therefore be contrary to the proper planning and sustainable development of the area.”*

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planning Officer's Report dated the 6<sup>th</sup> day of August, 2021, is the basis of the Planning Authority's decision. It includes the following comments:

- The site has no recent or relevant planning history but notes that an application for a detached dwelling served by a waste water treatment system and percolation area was refused under P.A. Ref. No. F12A/0294 on land parcel indicated in blue. The reasons for refusal were failure to comply with 'RU' zonings settlement strategy; access and insufficient information on services. The site subject of this application is described as being located to the north of the appeal site.

- The applicant's brother was granted permission for a detached dwelling, garage, waste water treatment system, new entrance together with all associated services under P.A. Ref. No. F01A/1031 on the basis of close family ties. It is further noted that this was granted on the 17<sup>th</sup> day of January, 2002 and that this grant of permission has been implemented.
- The applicant has provided insufficient documentary evidence which demonstrates residency in the family home or within the locality for a period of at least 15 years.
- No Supplementary Application Form for a Rural Dwelling has been provided with this application.
- It is considered that the applicant does not comply with Objective RF39(i) of the Development Plan.
- No visual amenity issues are raised.
- Concerns are raised that inadequate sightlines are demonstrated to serve the development. It is also considered that the required 145m on both sides of the entrance are unachievable.
- Concludes with a recommendation of refusal.

### 3.2.2. Other Technical Reports

**Transportation Planning Section:** In a report signed off on the 28<sup>th</sup> day of July, 2021, the following comments are made:

- Concern is raised that whilst two in-curtilage car parking spaces are available to both dwellings the reverse manoeuvring either in or out would not be ideal.
- It is noted that the required sightlines for an 80kmph speed limit road is 145m to the nearside road edge from an offset of 2.4m from the edge of the road back along the centre line of the access under DN-GEO-03060 are not demonstrated.
- The rural road is only 3.1m in width at this point and is too narrow for overtaking. In such instances the sightlines can be measured to the centreline of the road.
- Due to the alignment of the road and the extent of the applicants as well as their neighbour's hedgerow sightlines of 145m in either direction are unachievable.
- An estimated ambient speed of traffic observes was between 50 to 55kmph. In such situations the required sightline for 55kmph would be 78m. These sightlines could

be achieved to the south if the applicants severely cut back the curved hedge line which within the blue line ownership of the family holding. To the north the adjoining neighbours hedge would have to be tapered back to achieve this sightline.

- This report concludes with a request for additional information.

**Water Services Department:** No objection subject to recommended safeguards to the foul drainage and surface water design.

### 3.3. Prescribed Bodies

3.3.1. **Irish Water:** No objection.

### 3.4. Third Party Observations

3.4.1. None.

## 4.0 Planning History

### 4.1. Site and Blue Line Area:

4.1.1. **P.A. Ref. No. F12A/0294:** Planning permission was **refused** for a detached dwelling, new effluent waste water treatment system and percolation area and the erection of a separate garage on a parcel of land that includes the site subject of this appeal by applicants Aoife & Martin Slevin. It would appear that Aoife Slevin is the applicant under this application. The site is located to the north of the appeal site and this application was refused on the 13<sup>th</sup> day of November, 2012.

### 4.2. In the Vicinity:

4.2.1. **P.A. Ref. No. F01A/1031:** Planning permission was **granted** for a detached dwelling, garage, waste water treatment system together with all associated site works and serviced. This application was made by the applicant's brother. Formal date of grant 17<sup>th</sup> day of January, 2002.

## 5.0 Policy & Context

### 5.1. Local Planning Context

5.1.1. The Fingal County Development Plan, 2017-2023, is the statutory plan for the area and under which the site is zoned 'RU - Rural'. The stated land use zoning objective for such lands is to: *“protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage”*.

5.1.2. The site is located in the following Landscape Character Area: Low Lying Agricultural under the Development Plan.

5.1.3. The following Development Plan Objectives are noted:

- **Objective RF08:** Seeks to strengthen and consolidate the built form of the Rural Villages, providing a viable housing alternative to the open countryside with the advantages of a rural setting.
- **Objective RF26:** Seeks to ensure the vitality and regeneration of rural communities by facilitating those with a genuine rural generated housing need to live within their rural community.
- **Objective RF27:** Recognises and promotes the agricultural and landscape value of the rural area and prohibit the development of urban generated housing in the open countryside.
- **Objective RF33:** Requires that any houses which are granted permission on zoned land including 'RU' shall be subject to an occupancy requirement.
- **Objective RF39:** States that the Planning Authority will – *“permit new rural dwellings in areas which have zoning objectives RU, or GB, on suitable sites where the applicants meet the criteria set out in Table RF03”*.
- **Table RF03:** Sets out the criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing

(i) One member of a rural family who is considered to have a need to reside close to their family home by reason of close family ties, and where a new rural dwelling has not already been granted planning permission to a family member by reason of close family ties since 19th October 1999. The applicant for planning permission for a house

on the basis of close family ties shall be required to provide documentary evidence that:

- S/he is a close member of the family of the owners of the family home.
- S/he has lived in the family home identified on the application or within the locality of the family home for at least fifteen years.

(ii) A person who has been in employment in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community/economy for fifteen years prior to the application for planning permission, and has not already been granted planning permission for a new rural dwelling since the 19<sup>th</sup> October 1999. Documentary evidence of such employment is required.

(iii) A person who is an immediate member of a rural family who has not been granted permission for a rural dwelling, since the 19<sup>th</sup> October 1999, and is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances. The application for a rural dwelling must be supported by two sworn affidavits from relevant and qualified professionals, with at least one from a registered medical practitioner. A qualified representative of an organisation which represents or supports persons with a medical condition or disability may supply the other. It is to be noted that criterion no. (iii) applies in areas which have zoning objective, HA, as well as in areas with zoning objective GB and RU.

(iv) A 'bona fide' applicant who may not already live in the area, nor have family connections there or be engaged in particular employment or business classified with the local needs criteria, subject to the following considerations:

Such applicants will be required to satisfy the Council of their long-term commitment to operate a full-time business from their proposed home in a rural area, as part of their planning application. The applicant will outline within a submitted Business Plan how their business will contribute to and enhance the rural community and will demonstrate to the satisfaction of the Council that the nature of their employment or business is compatible with, and addresses and satisfies local needs, and will protect and promote the rural community. The applicant will satisfy the Council that the nature of their employment or business is dependent on its location within the rural area so as to discourage applicants whose business is not location dependent. The applicant will demonstrate their commitment to the proposed business through the submission of a comprehensive and professionally prepared Business Plan, and through



submission of legal documentation that they have sufficient funding committed to start and operate the business. Applicants whose business is not location-dependent will not be considered.

- **Objective RF57:** Requires such applications demonstrate the provision of a safe access and avoids the need to remove long or significant stretches of roadside hedging and trees.
- **Objective SS01:** Seeks to consolidate the vast majority of the County's future growth into the strong and dynamic urban centres of the Metropolitan Area while directing development in the hinterland to towns and villages, as advocated by national and regional planning guidance.
- **Objective SS07:** Seeks to direct rural generated housing demand to villages and rural clusters in the first instance and to ensure that individual houses in the open countryside are only permitted where the applicant can demonstrate compliance with the criteria for rural housing set down by this Development Plan.

## 5.2. Regional

- 5.2.1. The **Northern and Western Regional Assembly Regional Spatial and Economic Strategy, 2020 – 2032**, outlines the Regional Policy Objective to maintain the strategic capacity and safety of the national road network under RPO 6.5 which states: "*the capacity and safety of the region's land transport networks will be managed and enhanced to ensure their optimal use, thus giving effect to National Strategic Outcome No. 2 and maintaining the strategic capacity and safety of the national roads network including planning for future capacity enhancements*". The RSES supports the consolidation of the town and village network, to ensure that development proceeds sustainably and at an appropriate scale, level, and pace in line with the Core Strategies of the County Development Plans.

## 5.3. National

- 5.3.1. **National Planning Framework National Planning Framework – Project Ireland, 2040**, (2018) includes but is not limited to National Strategic Outcome 2 which includes the objective of "*maintaining the strategic capacity and safety of the national roads network including planning for future capacity enhancements*".

- 5.3.2. **National Development Plan**, 2018 to 2027, seeks to safeguard the strategic function of the national road network alongside safeguarding investment made in the transport network to ensure its quality levels, accessibility, and connectivity for users. Section 5.2 states that: *“it is an investment priority to ensure that the existing extensive transport networks, which have been greatly enhanced over the last two decades, are maintained to a high level to ensure quality levels of service, accessibility and connectivity to transport users”*.
- 5.3.3. **Sustainable Rural Housing Guidelines for Planning Authorities, 2005**. These guidelines 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. Essentially these guidelines seek to reach a balance in terms of development in the countryside so that the landscape is conserved and that new dwellings take account of as well as integrate in an appropriate manner with their surroundings. In addition, I note Map 1 which sets out the indicative outline of NSS Rural Area Types places the site in an area under strong urban influence.
- 5.3.4. **Code of Practice Wastewater Treatment Disposal Systems serving Single Houses**, (2021).

#### 5.4. **Natural Heritage Designations**

- 5.4.1. The nearest Natura 2000 sites are located c. 6.5km to the north-west of the Rogerstown Estuary SPA (Site Code: 004015) and SAC (Site Code: 000208).

#### 5.5. **EIA Screening**

- 5.5.1. Having regard to the nature and scale of the development proposed, i.e., a dwelling house, garage and associated works, the sites geographic remoteness from any Natura 2000 sites, there is no real likelihood of significant effects on the environment arising from the development sought under this application. 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 can be summarised as follows:

- The subject dwelling was built in 2001 and has been permanently occupied ever since.
- The subject dwelling has its own Eircode, water supply, ESB supply, has no enforcement proceedings against it and it complies with current Development Plan standards.
- Even if this appeal is unsuccessful nothing will change on site as the house will remain *in situ* and the applicant will remain living in it.
- This structure was erected and occupied prior to the applicant's brother receiving permission for a dwelling house under P.A. Ref. No. F01A/1031.
- All that will change with a grant of permission is the legal status of this house and it will provide a level of security to the applicants going forward.
- An overview of the applicants social and family ties is set out.
- The existing vehicular entrance is outside of the boundaries of the subject site. This entrance has served the original family home and the applicant's subject property for the last 20 years and the access arrangements will not change as a result of this proposal nor would the vehicle movements in and out.
- The Board is requested to overturn the Planning Authority's decision.

### 6.2. Planning Authority Response

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

- The subject site is zoned 'RU' Rural and as such the Fingal Settlement Strategy applies.
- Having assessed the content of the appellants submission the Planning Authority have no further comments to make.

- It is requested that the Board uphold its decision. However, should the appellants appeal be successful it is requested that the Board include a condition requiring payment of a Section 48 financial contribution be attached.

## 7.0 Assessment

### 7.1. Overview

7.1.1. Having examined the application details and all other documentation on file, and having regard to relevant local/regional/national policies and guidance, carried out an inspection of the site and its context I consider that the main issues in this appeal are as follows:

- Principle of Development
- Material Contravention
- Access

7.1.2. The matter of 'Appropriate Assessment' also requires examination. This I have dealt with under a separate heading at the end of my assessment below.

7.1.3. Prior to commencing my assessment, I note that this application includes two distinct elements, namely 'permission for retention' for certain specified existing development that has already been carried out on site and 'permission' to undertake certain proposed works in future on the site. According to the public notices and the details accompanying this application the applicant by way of this application seeks permission for the retention of a single storey dwelling house and the shared use of a vehicular entrance originally serving the applicants family dwelling. They also seek planning permission for an on-site waste water treatment unit and percolation unit.

7.1.4. In relation to applications that seek permission for retention the Development Management Guidelines for Planning Authorities, 2007, make it clear that, they must be considered "*as with any other application*". This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place and it is appropriate that is assessed in terms of its contribution towards the achievement of the applicable land use zoning objective,

the vision for the zoning objective, the residential settlement strategy, and its overall compliance as well as consistency with the policies and objectives it contains.

7.1.5. The applicant contends that the subject structure for which retention permission is sought for and the shared use of the subject entrance dates back to 2001. I do not accept this to be case based on the information provided by the applicant with this application and having regard to public information available whether that be planning applications in the vicinity of the site, maps available from OSI Ireland through to publicly avail aerial photography of this area that this is the case. And I consider that the subject building and the use of the family homes entrance is likely to have occurred at some much later date and I am cognisant that the matter of enforcement is one that falls under the Planning Authority's remit.

7.1.6. Based on the above considerations it is appropriate that the current application before the Board by way of this 1<sup>st</sup> Party appeal is assessed on an entirely *de novo* basis and it would be appropriate that a final decision on the appropriateness of this development at this location is made based on the proper planning and sustainable development of the area.

## **7.2. Principle of the Development Sought**

7.2.1. The Planning Authority's first reason for refusal sets out that the subject site is located on land zoned 'RU' – Rural under the current Development Plan which has a land use objective of protecting and promoting in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage. It also sets out the site is located in a 'Rural Area Under Strong Urban Influence' under the Sustainable Rural Housing Guidelines for Planning Authorities and that under National Policy Objective 19 of the National Planning Framework that in such areas that single housing in the countryside would be facilitated based on the core consideration of demonstratable economic or social need to live in such rural areas.

7.2.2. In relation to the rural dwellings at such locations it sets out that the eligibility criteria set out under Objective RF 39(i) of the Development Plan that an applicant may be considered under close family ties criteria for a rural dwelling where permission has not already been granted to a family member by reason of close family ties since the 19<sup>th</sup> day of October, 1999.

- 7.2.3. It raises concerns that the applicant's brother was granted permission for a dwelling house after this date on the basis of close family ties and therefore to permit the development sought under this application would materially contravene this Development Plan objective and in turn be contrary to ministerial guidelines and the National Planning Framework on such matters. Therefore, to permit the development sought under this application would be contrary to the proper planning and sustainable development of the area.
- 7.2.4. The applicant in this case is seeking for the retention permission for an existing dwelling house on the basis of close family ties. There is provision made in the Development Plan for rural dwelling houses on this basis on land zoned 'RU' but this is subject to demonstrating compliance with the rural settlement strategy and in particular to Development Plan Objective RF 39(i).
- 7.2.5. This Development Plan objective deals with the matter of new housing for the rural community other than for those who are actively engaged in farming.
- 7.2.6. It is unclear in the absence of the Supplementary Application form for rural dwellings, the information on file and the extremely modest size of the blue line family land holding which essentially appears to comprise of a small field what occupation the applicant has and as such it is reasonable as no demonstration has been provided to support that the applicant or her parent is actively engaged in farming that this application is considered against the criteria set out under this Development Plan objective.
- 7.2.7. In this regard Objective RF39 states that new rural dwellings in areas including 'RU' zoned land will be permitted where the applicant demonstrates that they meet the criteria set out in Table RF03.
- 7.2.8. The first criteria (Objective RF39(i)) is of particular relevance in that it is under this basis that the applicant is making their application for a new rural dwelling house and it is the criteria which the Planning Authority refer to in their decision notification. It sets out that one member of a rural family who is considered to have a need to reside close to their family home by reason of close family ties where a new rural dwelling has not already been granted planning permission to a family member by reason of close family ties since the 19<sup>th</sup> day of October, 1999.
- 7.2.9. In this case the applicants brother (Mark Parkinson) was granted planning permission for a rural dwelling house on an unserviced site requiring new access onto the local

road to the immediate north of the family home under P.A. Ref. No. F01A/1031. The formal date given for this grant of permission was the 17<sup>th</sup> day of January, 2002, and this grant of permission has been implemented.

- 7.2.10. The basis for this application was by reason of close family ties.
- 7.2.11. In addition to this within the blue line area an application was made by another member of the applicant's family, an Anthony Parkinson, under P.A. Ref. No. F05A/1614 for a detached dwelling house on an un-serviced site to the immediate north of the site subject to planning application P.A. Ref. No. F01A/1031.
- 7.2.12. This application was refused based on the applicant failing to demonstrate that the development sought under this application complied with rural settlement strategy. It was also questioned given the limited size of the land holding and based on the information provided that the landholding was a viable farm and one that had been as such for a minimum of 3 years.
- 7.2.13. Moreover, it would appear that the applicant and her husband made an application for a detached dwelling house, new effluent treatment system, percolation area and the erection of a separate garage under P.A. Ref. No. F12A/0294. The documentation submitted with this application indicates that the subject applicant made this application with her husband under her married name. This application was refused on the basis that the applicant had failed to demonstrate a genuine need to live in this rural locality in a manner that complied with the settlement strategy in place at the time this application was made alongside that the applicant's brother had been granted permission under P.A. Ref. No. F01A/1031 for a rural dwelling on the basis of close family ties.
- 7.2.14. The applicant in this case does not meet the criteria set out under Table RF03(i).
- 7.2.15. In relation to the other criteria for eligible applicants for a new rural house set out under Table RF03 (ii), (iii) and (iv). In that she is not a person in employment in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community/economy for fifteen years prior to making the planning application; is not an immediate member of a rural family who has not been granted permission for a rural dwelling since the 19<sup>th</sup> day of October, 1999, and has exceptional circumstances; and, is not a 'bone fide' applicant who may not already live in the area and the like satisfy the Council of their long-term commitment to operate a full-time business from their proposed home as part of their planning application.

- 7.2.16. The applicant in this case has failed to demonstrate compliance that they meet any of the circumstances whereby the principle of the development sought under this application would be deemed to be permissible under the settlement strategy set out in the Development Plan for land zoned 'RU'.
- 7.2.17. I therefore raise it as a concern that the applicant in this case has not sufficiently demonstrated genuine rural housing need as opposed to desire for a rural dwelling at a location where there is a strong proliferation of such applications on un-serviced land which in this case is served by a substandard in width and alignment local road remote from services.
- 7.2.18. The capacity of this rural area, which is recognised under local through to national planning provisions to be under strong urban influence due to a number of locational factors has limited capacity to absorb this type of development and the cumulative impacts arising from the same.
- 7.2.19. The National Planning Framework states that the: *"Irish countryside is, and will continue to be, a living and lived in landscape focusing on the requirements of rural economies and rural communities, while at the same time avoiding ribbon and over-spill development from urban areas and protecting environmental qualities"*. It also recognises that there is a continuing need for housing provision for people to live and work in the countryside.
- 7.2.20. It further indicates that careful planning is required to manage the demand in our most accessible countryside around cities and towns. In this regard it advocates focusing on the elements required to support the sustainable growth of rural economies and rural communities stating that: *"it will continue to be necessary to demonstrate a functional economic or social requirement for housing need in areas under urban influence, i.e., the commuter catchment of cities and large towns"*, with this being subject to site through to design considerations.
- 7.2.21. In keeping with this National Policy Objective 19 of the said document states inter alia that to: *"ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e., within the commuter catchment of cities and large towns and centres of employment, and elsewhere:*
- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural areas*



*and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements”.*

7.2.22. The applicant in this case has failed to demonstrate a genuine economic and/or social need to live in this rural area and as set out in the following section of this assessment does not propose to meet the siting and design criteria for such rural dwellings which includes providing a safe access to meet the needs an additional dwelling house.

7.2.23. Moreover, National Policy Objective 3a sets out an objective to deliver at least 40% of all new homes nationally within the built-up footprint of existing settlements. In relation to this national policy objective in the absence of demonstrating that the development sought under this application would not be contrary to local through to national planning provisions for a rural dwelling at location identified as being under strong urban influence the applicant has not demonstrated a genuine rural housing need. Therefore, in the absence of the same in line with local through to national planning provisions residential developments like this should be channelled to service areas within the built-up footprint of existing settlements.

#### 7.2.24. Conclusion

The applicant in this case has failed to demonstrate that they meet and/or comply with local through to national planning provisions for a rural dwelling house at this locality and are therefore not considered to have a genuine rural housing need. To permit the development sought under this application would therefore be in material conflict with local and national policy provisions on such one-off rural dwelling applications. It would also establish an undesirable for this type of *ad hoc* residential development in such rural locations where there is a proliferation of such developments dependent upon proprietary waste water treatment systems, additional access points onto local roads which are like in this case subject to the maximum posted speed limit of 80kmph and where the visual amenities of the rural countryside have been eroded by the cumulative impact of such developments. Due to the significant proliferation of this type of development in this rural area the capacity of this open countryside to absorb similar developments is extremely limited and requires careful management as well as consideration so that actual genuine local rural housing needs and rural activities/enterprises can be met and accommodated. The latter is in the spirit of the vision set out for 'RU' zoned land. In addition, I do not accept that the applicant's actions to build a dwelling house in the absence of a obtaining a valid formal grant of

planning permission to do so is a valid reason to justify the development sought under this application which is effectively a dwelling house that is contrary to the proper planning and sustainable development of the area. Thus, the proposed development, if permitted, would be contrary to public good as provided for under local through to national planning provisions, it would militate against the preservation of a rural landscape which is under significant pressure from urban generated one-off dwellings and this development would only meet the self-serving interest of an applicant who has failed to demonstrate a genuine rural local housing need for a one-off rural dwelling at this rural locality. In this case I consider that the principle of the development sought under this application is not acceptable and would be contrary to the proper planning as well as sustainable development of the area.

### 7.3. Material Contravention

7.3.1. On the matter of material contravention because of the particular wording used by the Planning Authority in its first reason for refusal, Section 37(2)(b) of the 2000 Planning and Development Act, 2000, as amended would appear to apply. This Section of the Planning Act states:-

*“(2)(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that:*

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

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

*(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.”*

In the light of this legal requirement, the first issue to be decided by the Board is whether it considers that the development comes within any of the four exceptions provided for in this Section, as outlined above.

- 7.3.2. (i) I do not accept a single dwelling house on land zoned 'RU' - Rural and is un-serviced land, is a development that could reasonably be considered as strategic or national importance and as such should override local, regional through to national planning provisions and guidance. Further, there is a presumption against the principle of such developments in areas under strong urban influence, except in limited cases, which the applicant has failed to robustly demonstrate. The development sought under this application therefore does not meet the criteria of Section 2(b)(i) of the said Act.
- 7.3.3. (ii) I have outlined above the provisions of the Development Plans in my report above. In so far as the development sought under this application is concerned, I do not consider that there are conflicting objectives nor that the relevant planning objectives and provisions of the Development Plan in relation to this type of rural development are not clearly stated in relation to the provision of single dwelling houses on land zoned 'RU'; is un-serviced; through to relates to a site that does not benefit from an independent safe access onto the public road network. I consider that the Development Plan provisions in relation to this type of development are reasonable, clear, and consistent with regional through to national planning policy provisions and guidelines on such matters. With regional through to national planning provisions seeking to channel urban generated residential developments to site appropriate and sustainable locations within the boundaries of settlements. The development sought under this application therefore does not meet the criteria of Section 2(b)(i) of the said Act.
- 7.3.4. (iii) As discussed in my assessment above the development sought under this application is contrary to Section 28 Ministerial Guidelines. In particular the Sustainable Rural Housing Guidelines 2005. It is also contrary to the National Planning Framework which seeks to channel such developments to settlements and seeks that such applications be based on the core consideration of demonstrable economic and/or social need. Alongside this RSES and NPF channel such developments to settlements where they can be more sustainably absorbed and accommodated. The development sought under this application therefore does not meet the criteria of Section 2(b)(iii) of the said Act
- 7.3.5. (iv) There is a strong proliferation of one-off dwellings in this rural locality has cumulative eroded and diminished the visual amenities and character of their landscape setting. The development sought under this application if permitted would

add to this in an adverse manner. Alongside this proposal puts forward an example of backland development behind a linear group of one-off rural dwellings in a manner that would be out of character with the pattern of development in the area. Further, as stated previously in this assessment it is appropriate that this application is determined on its merits having regard to the relevant planning provisions in place at the time of determination. The development sought under this application therefore does not meet the criteria of Section 2(b)(iv) of the said Act.

7.3.6. In conclusion, having had regard to all relevant planning provisions and having had regard to the detailed criteria set out in Section 37(2)(b) of the Planning & Development Act, 2000, as amended, I do not consider that there are any material grounds by which the Board could justify a grant of permission in this case.

#### 7.4. Access

7.4.1. The second reason for refusal considers that the entrance serving the proposed development would endanger public safety by reason of a traffic hazard and for this reason it would be contrary to Objective DMS129 of the Development Plan.

7.4.2. The Development Plan sets out under Chapter 12 that a primary consideration in the assessment of planning applications will be the design and/or improvements of roads, the safety of all road users, including pedestrians, cyclists, and motorists. In relation to the same Objective DMS129 states that the Planning Authority will “*promote road safety measures in conjunction with the relevant stakeholders and avoid the creation of traffic hazards*”.

7.4.3. In relation to the concerns set out in the Planning Authority’s Transportation Planning Section report, dated the 28<sup>th</sup> day of July, 2021, I consider that they are reasonable. Given that:

- 1) There is restricted space to safely manoeuvre the required two car parking spaces to serve the existing dwelling and the dwelling subject of this application.
- 2) The applicant has failed to demonstrate the required sightlines for an 80kmph speed limit road is 145m to the nearside road edge from an offset of 2.4m from the edge of the road back along the centre line of the access under DN-GEO-03060. They put forward no improvements to entrance onto the public road which originally served the existing dwelling, and for which access as well as egress onto the public road network for the subject dwelling is dependent upon.

- 3) The rural road onto which the existing entrance opens has a restricted width of just over 3m and with deep drainage ditches with flowing water at either side. This restricted width together with the lack of a roadside verge when taken together with the lack of adequate sightlines in both directions together with the substandard design, layout and nature of the existing entrance and driveway serving the existing as well as subject dwelling is such that it would not safely accommodate the vehicle movements generated by both dwellings onto the public road network and the vehicle manoeuvres from this entrance could potentially give rise to additional conflict with road users over and above the entrance permitted function of serving one dwelling house.
- 4) Due to the alignment of the road and the extent of the applicants as well as their neighbour's hedgerow sightlines of 145m in either direction are unachievable, and the appellant clearly sets out that they are not willing to make any improvements to this entrance in order to reduce the road safety hazard of the additional traffic the proposed development would generate.
- 5) The appellants have not demonstrated by way of appropriate technical expertise that there is an ambient traffic speed along the adjoining stretch of road that would support a lesser sightline in either direction. In this regard the Planning Authority's Transportation Planning Section estimated that there was an ambient speed of traffic between 50 and 55kmph at this location at the time of their site inspection. If this was the case a lesser of sightline of 78m in both directions could be required. However, as said the appellant is not willing to undertake any improvements to the entrance serving the proposed development or to engage with the neighbouring property owner to taper the hedge to improve the sightlines from the subject entrance.
- 6) On the day of my site inspection there was a steady stream of traffic along this rural road and in the network of restricted in width rural roads within the site's locality, particularly to the north. With this rural locality suffering from a strong proliferation of one-off dwellings in the form of ribbon as well as linear developments along this substandard in nature public road network. The road in the vicinity is not safe for two vehicles to pass safely in either direction and requires one vehicle to reverse or wait in an entrance to allow the other vehicle to pass.

7.4.4. Based on the above considerations I concur with the Planning Authority's second reason for refusal in that the proposed development, if permitted, would endanger public safety by reason of a traffic hazard and would for this reason be contrary to Objective DMS129 of the Development Plan which essentially seeks to promote road safety measures in conjunction with the relevant stakeholders and to avoid the creation of traffic hazards.

## 7.5. **Appropriate Assessment**

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

## 7.6. **Other Matters Arising**

7.6.1. **Enforcement:** The appellants indicate that the subject dwelling house will not be removed should they be unsuccessful in their appeal to the Board. Enforcement is a matter for the Planning Authority as they see fit and as set out previously in this assessment that no account can, or should, be taken of the fact that the development has already taken place and it is appropriate that is assessed in terms of its contribution towards the achievement of the applicable land use zoning objective, the vision for the zoning objective, the residential settlement strategy, and its overall compliance with relevant planning provisions.

## 8.0 **Recommendation**

8.1. I recommend that retention permission be **refused**.

## 9.0 **Reasons and Considerations**

1. Having regard to the location of the site within an "Area Under Strong Urban Influence" as identified in 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 rural housing need in accordance with the current Fingal County Development Plan 2017-2023, it is considered that the applicant does not fully

comply with the requirements of Objectives RF39 and Table RF03(i) of the Development Plan.

The proposed development, therefore, would materially contravene the 'RU' zoning objective of the site, whereby dwellings on such zoned lands require compliance with the Objectives of the Fingal Development Plan Rural Settlement Strategy. Furthermore, it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, 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.

Having regard to the documentation submitted with the planning application and appeal, the Board is not satisfied that the applicant has a demonstrable economic or social need to live in this rural area.

Furthermore, the Board is not satisfied that the applicant's housing needs could not be satisfactorily met in an established smaller town or village/settlement centre.

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

2. It is considered that the development sought under this application would endanger public safety by reason of traffic hazard because of the additional traffic turning movements the development would generate on a substandard rural road at a point where sightlines are restricted in both directions, where the width of the road is restricted, where the entrance serving the development is substandard in its design and layout to accommodate two dwellings and where the maximum posted speed limit applies.

---

Patricia-Marie Young  
Planning Inspector

---

17<sup>th</sup> day of January, 2022.