



An
Bord
Pleanála

Inspector's Report

ABP-311431-21

Development

1) A storey and a half style dwelling, new wastewater treatment system and percolation area, domestic garage, upgrading existing site entrance, 2) the replacement of existing wastewater treatment system and percolation area serving the adjacent family dwelling to facilitate the proposed new development, 3) demolition of existing shed, and 4) all ancillary site development works.

Location

Magilstown, Swords, Co. Dublin.

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

F21A/0361

Applicant(s)

Jennifer Kealy & Others

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Jennifer Kealy & Others

Date of Site Inspection

26th February 2022

Inspector

Colin McBride

1.0 Site Location and Description

1.1. The appeal site, which has a stated area of 0.527 hectares, is located to the north of Swords, Co. Dublin in the rural area. The appeal site is located on the eastern side of Balheary Road. The appeal site is made up of the curtilage of a single-storey dwelling and part of field area adjacent the existing dwelling. Adjoining uses include agricultural lands to the north and east and an existing farmyard to the south.

2.0 Proposed Development

2.1. Permission is sought to construct a storey and a half dwelling new wastewater treatment system and percolation area, domestic garage, upgrading existing existing site entrance. It is also proposed to replace the existing wastewater treatment system and percolation area serving the adjacent family home to facilitate the new dwelling and demolish an existing shed. The proposed dwelling has a floor area of 259.08sqm (garage 53sqm) and a ridge height of 7.92m. The dwelling features a pitched roof and external finishes of smooth plaster/dashed render and blue/black roof slates.

3.0 Planning Authority Decision

3.1. Decision

Permission refused based on one reason...

1. The proposed development is located on land within the greenbelt zoning objective under the Fingal Development plan 2017-2023, the objective of which is to 'Protect and provide for a Greenbelt'. The applicants are seeking a dwelling in the greenbelt area on the basis of 'exceptional health circumstances', which is outlined in paragraph (iii) of Table RF03 of Objective RF39 in the Fingal Development Plan 2017-2023. This category of rural generated housing needs applies to a person who is an immediate family member of a rural family who is considered to have a need to live adjacent to the family home by reason of the persons exceptional health circumstances. For the purpose of planning permission Mark & Matthew Kealy are

not considered to the 'person' referred to in paragraph (iii) of Table RF03 on the basis that they are not considered as an immediate family member of the Dwyer family whose family home is located adjacent to the proposed dwelling. No exceptional health circumstances have been outlined from the immediate family member Jennifer Kealy therefore the Planning Authority considers that the applicants have not demonstrated a need for a dwelling in the rural area of Fingal on the basis of exceptional health circumstances of an immediate family member. The proposed development would contravene materially the rural settlement strategy of the Fingal Plan 2017-2023, specifically paragraph (iii) of Table RF03 in Objective RF39, would be contrary to the Ministerial Guidelines and over-arching national policy in the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report

Planning Report (26/08/21): Non-compliance with rural housing policy/lands zoned greenbelt. Refusal was recommended based on the reason outlined above.

Other reports

Parks and Green Infrastructure (20/07/21): No objection subject to condition.

Water Services (20/07/21): No objection.

Transportation Planning (10/08/21): Further information including letter of consent to cut back hedgerow.

3.3. Prescribed Bodies

3.3.1 None.

3.4. Third Party Observations

None.

4.0 Planning History

PL06F.240843 (F12A/0122): Permission refused for a dwelling and associated site works. Refused based on one reason...

1. The subject site is zoned GB under the Fingal County Development Plan 2011-2017, the objective of which seeks to 'protect and provide for a Green Belt.' The applicant is seeking planning permission for a new dwelling on the basis of her direct participation in running the family farm. It is considered that the application has not demonstrated compliance with objective RH09 which restricts the number of additional dwellings per family farm in a greenbelt area. Having regard to the recently permitted additional dwellinghouse on the family farm, it is considered that to permit this further dwellinghouse would be contrary to the policies of the development plan and to the proper planning and sustainable development of the area.

F10A/0499: Refusal of permission for a dormer dwelling for the same applicant on the same site in the same family landholding. Refused based on two reasons...

1. The subject site is zoned GB under the Fingal Development Plan 2005-2011 the objective of which is to protect and provide for a green belt to demarcate the urban and rural area and provide for agriculture and amenity in a manner that protects the physical and visual amenity of the area.' Residential development is only permitted on suitable sites where the applicant has established an essential need to live in the rural area by reason of family ties, employment in an occupation predominantly serving the rural community or exceptional health circumstances subject to specific criteria as outlined in section 5.3 of the Fingal Development Plan 2005-2011 (referred to as the Rural Housing Policy).the applicant has applied for a rural dwelling through her direct participation in running the family farm (objective RD01 of the Rural Housing Policy). However based in this information submitted the applicant

has failed to demonstrate to the satisfaction of the Planning authority that she is actively engaged in or directly participates in the running of the family farm to a degree that Objective RD01 is satisfactorily complied with.

2. The applicant has submitted insufficient information on relation to the foul sewer and surface water arrangements. In the absence of such information it cannot be satisfactorily established that a dwelling house and waste water treatment system may be accommodated on this site without risk to public health...

F09A/416: Grant of permission for a dwelling for a family member on the same farm holding. This was permitted on the basis of family ties.

5.0 Policy Context

5.1. Development Plan

The relevant development plan is the Fingal County development Plan 2017-2023. The appeal site is within lands zoned 'GB' Greenbelt with a stated objective to 'protect and provide for a Greenbelt'.

Table RF01 indicates the maximum number of houses which will be permitted per existing house with such being 1 (+1 for exceptional health reasons) in Greenbelt.

Objective RF31 Permit a maximum number of one incremental house for those who meet the relevant criteria set out in this chapter within areas with the zoning objective HA or GB plus one house for a person with exceptional health circumstances.

Objective RF39 Permit new rural dwellings in areas which have zoning objectives RU, or GB, on suitable sites where the applicant meets the criteria set out in Table RF03.

iii. A person who is an immediate member of a rural family who has not been granted permission for a rural dwelling, since the 19th 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.

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

The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those within proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

5.3 National Planning Framework – Project Ireland 2040

NPO19 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 housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;

- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.4 Natural Heritage Designations

5.4.1 None in the zone of influence of the project.

5.5 EIA Screening

The proposed development is of a class but substantially under the threshold of 500 units to trigger the requirement for submission of an EIAR and carrying out of EIA. Having regard to the nature of the development, which is a new dwelling and associated site works, the absence of features of ecological importance within the site, I conclude that the necessity for submission of an EIAR and carrying out of EIA can be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1 A first party appeal has been lodged by ATC Building Surveying & Engineering Consultancy on behalf of Jennifer, Mark and Matthew Kealy. The grounds of appeal are as follows...

- The appellants argue there is an anomaly in Development plan policy and the criteria under Table RF03 in that the definition of a close family member includes a son, daughter, son-in-law/daughter-in-law of a member of a rural family and such is facilitated under RF03 (i) however in the case of exceptional health circumstances it is limited to immediate family members of a rural family and such discriminates against the close family member. This is not a fair and balanced approach.
- The appellants outline the circumstances under which they are applying with the Jennifer Kealy being the daughter of the landowners and the site being adjacent her family home with her son having exceptional health

circumstances. The appeal outlines the circumstances and the requirement for additional space to cater for health circumstances as well as location beside family to help out.

- The appellants note that the definition of immediate family member is not set out in the Development plan, close family members should be taken into account in assessing the proposal.

7.0 Assessment

7.1. Having inspected the site and associated documents, the main issues can be assessed under the following headings.

Rural Housing policy

Public Health

Other Issues

7.2. Rural Housing policy:

7.2.1 Permission was refused on the basis that the site is located within the 'GB' Greenbelt zoning objective under the Fingal Development Plan, 2017- 2023 the objective of which is to "protect and provide for a Greenbelt' and a failure of the applicant to meet the criteria for rural housing in this zoning. The applicants were seeking permission on the basis of Objective RF39 paragraph (iii) of Table RF03. Objective RF 39 of the Development Plan is to permit new rural dwellings in areas which have zoning objectives RU, or GB, on suitable sites where the applicant meets the criteria set out in Table RF03. Paragraph iii. Relates to a person who is an immediate member of a rural family who has not been granted permission for a rural dwelling, since the 19th 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.

7.2.2 The application is located beside Jennifer Kealys' family home (parents' home), where she had resided for a considerable period of time. It was determined on the basis that the applicants have a home in Swords that a genuine rural generated need does not exist. In the context of Table RF03 (iii), it was determined that the immediate family member being assessed under this criteria is Jennifer Kealy and that on basis that she has no exceptional health needs, she does not comply with rural housing policy and that the health circumstances of her son are not relevant consideration. It was determined that the proposed development would contravene materially the rural settlement strategy of the Fingal Plan 2017-2023, specifically paragraph (iii) of Table RF03 in Objective RF39, would be contrary to the Ministerial Guidelines and over-arching national policy in the National Planning framework.

7.2.3 The issue appears to be that the appellant considers that the policy is unfair and that the lack of definition of an immediate family member is highlighted as well as the fact that being a close family member is considered sufficient for rural housing under Table RF03 (i), however such is not the case for exceptional health circumstances. From my reading of the County Development Plan there is no definition of either a close family member/close family ties or an immediate family member of a rural family in the Development Plan, however it is clear that they are not the same thing and are meant to be distinct elements. The only place that either of these is defined is in the Supplementary Application Form for Planning Permission in a Rural Area where under Question 10 close family ties are identified as being son, daughter, son-in-law and daughter-in-law. The Planning Authority have determined that an immediate family member is a son or daughter and that a close family member includes son and daughter but also son/daughter in law. The close family ties does not refer to grandchildren and clearly policy is written from the point of view of adults applying for permission. I cannot see any reason to go against the Council's assessment as there is clear a distinction between the scope of individuals that is covered by close family ties and immediate family member. I consider that it is unhelpful that these terms are not clearly defined in the plan, however I do not

consider that the assessment of the proposal in the context of Development Plan policy is unreasonable or unclear in its conclusion.

- 7.2.4 The applicant clearly do not qualify for rural housing based on Development policy on the basis that they have a house in the urban area and do not appear to have any occupational ties to the rural area or rural activity. The applicant are applying based on exceptional health circumstances. The applicants' son has medical needs that would be enhanced by having additional space and the rural location. Notwithstanding such national policy is a significant consideration. In terms of the Sustainable Rural Housing Guidelines and the NSS Rural Area Types, the appeal site is an area Area Under Strong Urban Influence. Consideration must be given to national policy with the site located in an Area Under Strong Urban Pressure. I would consider that in this case that the applicant has no definable social or economic need to live in the open countryside and it has not been demonstrated that there is a need to reside in the open countryside. National policy set out under the Objective 19 of the National Planning Framework and the guidance set out in the Sustainable Rural Housing Guidelines emphasises the requirement to demonstrate an economic, social or functional need to live in a rural area under strong urban influence such as this. In this case the applicant does not have a defined social or economic need to live in this area of strong urban influence and the development would be contrary to Objective 19 of the National Planning Framework and would be contrary to the guidance set out in the Sustainable Rural Housing Guidelines.
- 7.2.5 The proposed development, in absence of any identified local based need for the house at this location, would result in a haphazard and unsustainable form of development in an unserviced area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

7.2.6 The proposal was refused on the basis that it was a material contravention of Development Plan policy in particular paragraph (iii) of Table RF03 in Objective RF39 in that the applicant did not comply with rural housing policy and the criteria for establishing rural housing need. As outlined above I am of the view that the applicant has not satisfied the criteria set out under the County Development Plan and the proposal is contrary Development Plan policy. Notwithstanding such the provisions under Section 37 Subsection 2 (a) & (b) of the Planning and Development Act 2000 (as amended), state that where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan the Board is precluded from granting permission unless certain criteria are met. I do not consider the proposed development should be granted permission. The proposed development is not of strategic or national importance and there are no conflicting or unclear objectives in the Fingal County Development Plan. There is no evidence before me to demonstrate that permission has been granted for similar development in the surrounding area. There are no provisions for granting such development, having regard to the regional spatial and economic strategy for the area, guidelines under Section 28 or policy directives under section 29 of the Act, the statutory obligations of the local authority, or any relevant policy of the Government

7.3 Public health:

7.3.1 The proposal entails the installation of a proprietary wastewater treatment system to serve the new dwelling and replacement and installation of new proprietary wastewater treatment system to serve the existing dwelling. Site characterisation was carried out including trial hole and percolation tests. The trial hole test (2m) showed water ingress into the trial hole at 1.4m. T tests for deep subsoils and/or water table by the standard method were carried out with percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The test results indicate percolation values that are within the standards that would be considered acceptable for the operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. The

drawings submitted meets the required separation distances set down under the EPA Code of Practice (based on site size and separation from site boundaries).

7.4 Other Issues:

7.4.1 No issues were raised in the reason for refusal relation to visual/landscape character or traffic. The appeal site is a flat site and is not a particular prominent location or highly visible in the surrounding area. The proposal would be satisfactory in terms of overall visual impact.

7.4.2 It is proposed to share the existing access serving the existing dwelling at this location. The alignment and width of the road is such that sufficient sightlines are available to cater for the turning movements likely to be generated by the proposed development.

8.0 **Appropriate Assessment**

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

9.0 **Recommendation**

9.1. I recommend refusal based on the following reasons...

10.0 **Reasons and Considerations**

1. Having regard to the location of the site within an Area Under Strong Urban Influence in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government 2005, 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, the Board could not be satisfied on the basis of the information on the file that the applicants came within the scope of either economic or social housing need criteria as set out in the overarching National Guidelines.

The proposed development, in absence of any identified need for the house at this location, would result in a haphazard and unsustainable form of development in an unserved area, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and undermine the settlement strategy set out in the development plan. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
Senior Planning Inspector

28th February 2022