



An  
Bord  
Pleanála

## Inspector's Report ABP-311628-21

<b>Development</b>	Partial demolition of garage and extension to facilitate conversion to house and associated site development works.
<b>Location</b>	Millennium, 4 Blackwoods, Blackwood Lane, Malahide, Co. Dublin, K36 HP30
<b>Planning Authority</b>	Fingal County Council
<b>Planning Authority Reg. Ref.</b>	F21A/0396
<b>Applicant(s)</b>	Ciara Mooney
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First
<b>Appellant(s)</b>	Ciara Mooney
<b>Date of Site Inspection</b>	27 <sup>th</sup> February 2022

**Inspector**

Colin McBride

## **1.0 Site Location and Description**

- 1.1. The appeal site, which has a stated area of 0.4 hectares, is located off Blackwood Lane to the south of Malahide. The site is the curtilage of an existing two-storey dwelling (no. 4) that is part of a small housing development of 10 dwellings. The existing dwelling on site is a two-storey detached dwelling with a detached garage. The site has two vehicular entrances off the service road serving the housing development which is cul-de-sac and has vehicular access off Blackwood Lane. Adjoining uses include a dormer style dwelling to the east and a two-storey dwelling to the west. To the south is a golf course.

## **2.0 Proposed Development**

- 2.1. Permission is sought for (1) partial demolition of and construction of an extension to the existing standalone garage to facilitate its conversion into a two-storey, three bedroom dwelling. The proposed dwelling will be accessed by the existing eastern vehicular entrance serving the dwelling and will include private amenity space to the rear and side and 2 no. car parking spaces; (ii) construction of 1.8 metre high fence to the west of the proposed dwelling; (iii) installation of a percolation area, treatment plant and soakaway system to serve the new dwelling; and (iv) all site, landscaping and ancillary works necessary to facilitate development. The dwelling is to have a floor area of 193.6sqm and a ridge height of 7.531m.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission refused based on two reasons...

1. The site is located within the 'GB' zoning objective under the Fingal Development Plan, 2017 – 2023, the objective of which is to 'protect and provide for a Greenbelt' 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 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 demonstrable economic or social need to live in such rural areas under urban influence. The applicant is not considered to have a genuine rural housing need and having regard to the documentation submitted with the application, the applicant has not satisfactorily demonstrated her eligibility to be considered for a dwelling in the rural area of Fingal on the basis of 'close family ties'. The proposed development would contravene materially the rural settlement strategy of the Fingal Development Plan 2017-2023 including Objective RF39, would be contrary to the Ministerial Guidelines and to the 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.

2. The proposed subdivision of the site for which no genuine rural generated housing need has been demonstrated would undermine the vision for the zoning which is to 'check unrestricted sprawl of urban areas, to prevent coalescence of settlements, to protect countryside encroachment'... and would represent a significant intrusion into the landscape character in the vicinity which is established by individual houses on similarly large plots of land. The proposal would introduce a densification of housing in the immediate area which would set an undesirable precedent for similar development within Blackwoods and would not be consistent with the proper planning and sustainable development of the area. This would materially contravene the objective and vision of the GB-Greenbelt zoning within the Fingal Development Plan 2017 – 2023.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

Planning report (14/09/21): issues concerning compliance with rural housing policy and pattern and scale of development. Refusal recommended based on the reasons outlined above.

#### **3.2.2. Other Technical Reports**

Irish Water (19/08/21): No objection.

Transportation Planning (no date): No objection.

Parks and Green Infrastructure (03/09/21): No objection subject to conditions.

### 3.3. Prescribed Bodies

DAA (30/07/21): Condition required regarding noise.

### 3.4. Third Party Observations

None.

## 4.0 Planning History

F21A/0079: Permission refused for extension of garage and change of use to a dwelling. Refused based on three reasons...

*1. The site is located within the 'GB' zoning objective under the Fingal Development Plan, 2017 – 2023, the objective of which is to 'protect and provide for a Greenbelt' 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 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 demonstrable economic or social need to live in such rural areas under urban influence. The applicant has not demonstrated her eligibility to be considered for a dwelling in the rural area of Fingal on the basis of 'close family ties' to the satisfaction of the Planning Authority. The proposed development would contravene materially the rural settlement strategy of the Fingal Development Plan 2017-2023 including Objective RF39, would be contrary to the Ministerial Guidelines and to the 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.*

*2. The proposed house is to be located on green belt zoned lands. The development of an additional house for which no rural generated housing need has been demonstrated would undermine the vision for the zoning which is to 'check unrestricted sprawl of urban areas, to prevent coalescence of settlements, to protect countryside encroachment'... and would represent a significant intrusion into the landscape character in the vicinity which is established by individual houses on similarly large plots of land. The proposal would introduce a densification of housing in the immediate area which would set an undesirable precedent for similar development within Blackwoods. This would materially contravene the objective and vision of the GB-Greenbelt zoning within the Fingal Development Plan 2017 – 2023.*

*3. The applicant has submitted insufficient documentation with respect to the disposal of foul effluent. The applicant has failed to submit a Site Characterisation Form and treatment option design in accordance with the EPA Code of Practice for Wastewater Treatment and Disposal Systems Serving Single Dwellings (October 2009). In the absence of same the applicant has failed to demonstrate that the proposed house can be accommodated on the overall site without being prejudicial to public health. The proposed development would represent a public health hazard and would contravene the requirements of Objective RF66, DMS53 and DMS54 of the Fingal Development Plan 2017 – 2023 regarding adequate provision of foul water treatment.*

F18A/0393: Permission refused for extension of garage and change of use to a dwelling. Refused based on three reasons...

*1. The subject site is zoned under Objective GB-Greenbelt within the Fingal Development Plan 2017-2023. Applicants who wish to provide for a dwelling on lands zoned under the GB-Greenbelt objective must demonstrate a genuine rural housing need and as such must comply with the Rural Housing Policy as set out within Table RF03 of the Fingal Development Plan 2017-2023. The applicants have an existing house in the rural area and have not satisfactorily demonstrated to the*

*Planning Authority that they have a genuine rural housing need and therefore do not comply with the rural housing policy. The proposed development for a new house on the subject site would materially contravene the Objective RF39 of the Fingal Development Plan 2017-2023.*

*2. The proposed house is located in green belt zoned lands. The proposed development for an additional house on a 0.3496ha site for which no rural generated housing need has been demonstrated would undermine the vision for the zoning which is to 'check unrestricted sprawl of urban areas, to prevent coalescence of settlements, to protect countryside encroachment'... and would represent a significant intrusion into the landscape character in the vicinity which is established by individual houses on similarly large plots of land. The proposal would introduce a densification of housing in the immediate area which would set an undesirable precedent for similar development within Blackwoods. This would materially contravene the objective and vision of the GB-Greenbelt zoning within the Fingal Development Plan 2017 – 2023.*

*3. The proposed house would share an existing waste-water treatment system serving an existing house on the land. Furthermore it would not have sufficient associated lands to comply with the spatial requirements for a wastewater treatment system. As such the proposed development would represent a public health hazard and would contravene the requirements of Objective RF66, DMS53 and DMS54 of the Fingal Development Plan 2017 – 2023 regarding adequate provision of foul water treatment.*

## **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.

Table RF03.

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.

## 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

None within 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 Hughes Planning & Development Consultants on behalf of the applicant Ciara Mooney. The grounds of appeal are as follows...

- The applicant meets the necessary criteria (Table RF03) for the construction of a dwelling in the 'GB' Greenbelt area and has established a genuine need to build a dwelling at this location. The applicant existing accommodation is substandard with need for additional space. The applicant is involved in a family business with her parents and there is a desire to locate beside her parents for the purposes of care.
- The proposal accords with Greenbelt policies in that the proposal is a sensitive design within the curtilage of an existing dwelling that would not be detrimental to the greenbelt area due the nature of the proposal and its infill characteristics.
- The proposal for subdivision provides sufficient level of amenity space with the proposed dwelling and retains a sufficient level with the existing dwelling. The proposal will also have an independent vehicular access using the eastern access to the site. The design and scale of the proposal is acceptable in the context of visual amenity. The proposal meets all relevant Development Control standards. The proposal is satisfactory in the context of adjoining amenity, traffic impact.
- The applicant complies with national policy and the proposal is to use an under-utilised site in proximity to Malahide. The applicant has demonstrated a sufficient link to the rural area in question.
- The proposal would be set an undesirable precedent due to the infill nature of the site and size of the existing curtilage of the dwelling. It is considered that the proposal would be satisfactory in the context of the pattern of development with a number of precedents cited provided for subdivision of the curtilage of existing dwellings.

## 6.2. Planning Authority Response

### 6.2.1 Response by Fingal County Council.

- The PA refer to their assessment of the proposal and request that the decision to refuse is upheld.

## 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

Design, scale, pattern of development

Public Health

### 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 applicant was deemed to have failed to demonstrate compliance with the criteria set down under Development Plan policy as well as being contrary to National Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018.

7.2.3 The criteria for the greenbelt area is under Table RF03 paragraph (i). The applicant had submitted a supplementary application form and a supporting documentation. One of the main criteria is that the applicant has lived in the family home or within the locality for at least 15 years. The Planning Authority appear to have taken issue with the clarity and the ability to verify the information submitted and decided that the applicant has failed to demonstrate compliance with the criteria under RF03 (i). Based on the information on file the applicant had resided at family home (no. 4

Blackwoods from 2000 to 2016) and currently resides at no. 27 The Bawn, Malahide (referred to in the appeal submission) and described as being formerly owned by the applicant in the planning report. I would consider that on the balance of information submitted the applicant would comply with the criteria set down under Table RF03 in terms of connection to family home and the specific location of the site and residence at the location for the relevant period of time.

7.2.4 Notwithstanding the ability to demonstrate compliance with the criteria under Table RF03 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 would base this on the fact that the applicant currently resides in the urban area and the family business referred to is not rural business but an urban based business and not one that requires the applicant to reside in a rural area (restaurant chain). It is acknowledged that applicant desires to live next to her parents for the purpose of future care and such is reasonable desire, however it does not constitute a need or override national policy. I would consider that in this case a rural generated need has not been demonstrated. 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 an unsustainable form of development in an unserved area and would militate against 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 of being a material contravention of Objective RF39 and the 'GB' Greenbelt zoning objective of the Fingal Development Plan 2017-2023. I would question whether the proposal is a material contravention. 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 unless certain criteria are met. As noted above I do not consider the proposed development should be granted permission. The proposed development is not of strategic or national importance and there are not 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 Design, scale, pattern of development:

7.3.1 The proposal was refused on the basis that the proposed subdivision of the site for which no genuine rural generated housing need has been demonstrated would undermine the vision for the zoning which is to 'check unrestricted sprawl of urban areas, to prevent coalescence of settlements, to protect countryside encroachment'... and would represent a significant intrusion into the landscape character in the vicinity which is established by individual houses on similarly large plots of land. The proposal would introduce a densification of housing in the immediate area which would set an undesirable precedent for similar development within Blackwoods and would not be consistent with the proper planning and sustainable development of the area. This would materially contravene the objective and vision of the GB-Greenbelt zoning within the Fingal Development Plan 2017 – 2023.

7.3.2 The appeal site despite being in an area classified as greenbelt and a rural area, is located within the curtilage of an existing dwelling that is part of small housing development of large one of dwellings set off a cul-de-sac. The dwellings are characterised by having a large curtilage and each dwelling has its own on-site wastewater treatment system. Despite being in a rural area the site has an urban character due to being within the existing housing development. The proposal is for demolition of part of a garage within the curtilage of a dwelling and its extension and change of use to a two-storey dwelling. The curtilage of the existing dwelling is to be subdivided with provision of a new wastewater treatment system and use of an existing entrance (existing dwelling has two). I would be satisfied that the proposal provides for a dwelling, which has sufficient levels of amenity space, off-street car parking and independent access while retaining a similar and acceptable standard of such in relation to the existing dwelling. I would also be of the view that the fact the proposal is infill in nature and the existing urban context, that the overall design and visual impact of the dwelling is unlikely be significant, prominent or detrimental to the visual amenities of the area or the amenities of adjoining properties.

#### 7.4 Public Health:

7.4.1 The proposal entails the installation of a new proprietary wastewater treatment system to serve the new dwelling. There is an existing wastewater treatment system serving the existing dwelling on site. Site characterisation was carried out including trial hole and percolation tests. The trial hole test (2.1m) showed no water ingress into the trial hole. 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. Groundwater vulnerability is identified as high. 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) however there is no details regarding the location of the wastewater treatment system on the site to the east.

7.4.2 I would consider that notwithstanding the use of a proprietary wastewater treatment system on site, that having regard to the excessive proliferation of domestic wastewater treatment systems in the this rural area and in the immediate vicinity of the site, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government 2005 which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities, I could not be satisfied on the basis of the information on files, that the impact of the proposed development in conjunction with existing wastewater treatment systems in the area would not give rise to a risk of groundwater pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

## **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 applicant comes 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 an unsustainable form of development in an unserved area and would militate against 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.

2. Notwithstanding the proposal to use a proprietary wastewater treatment system on site, the Board had regard, to the proliferation of domestic wastewater treatment systems in this rural area, the fact that that groundwater in the area is classified as highly vulnerable, and to the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government 2005 which recommend, in un-sewered rural areas, avoiding sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities. The Board could not be satisfied, on the basis of the information on the file, that the impact of the proposed development in conjunction with existing wastewater treatment systems in the area would not give rise to a risk of groundwater pollution. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Colin McBride  
Planning Inspector



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28<sup>th</sup> February 2022