



An  
Bord  
Pleanála

## Inspector's Report

### ABP-311989-21

<b>Development</b>	Construction of house, garage, waste water treatment system and polishing filter percolation area, vehicular entrance together with all associated site works.
<b>Location</b>	Balgathern, Tullyallen, Drogheda, County Louth.
<b>Planning Authority</b>	Louth County Council.
<b>Planning Authority Reg. Ref.</b>	211154.
<b>Applicant(s)</b>	John Carton.
<b>Type of Application</b>	Planning Permission.
<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	John Carton.
<b>Observer(s)</b>	1. Christine Carton. 2. Jim Garvey.
<b>Date of Site Inspection</b>	10 <sup>th</sup> day of February, 2022, and 1 <sup>st</sup> day of March, 2022.
<b>Inspector</b>	Patricia-Marie Young.

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## 1.0 Site Location and Description

1.1. The irregular shaped appeal site has a given site area of 0.4175ha and it forms part of a larger agricultural field that is located in the 'Townland' of Balgathern, c240m to the west of the M1 corridor, c1.8km to the north of village centre of Tullyallen and c5.8km to the historic main heart of Drogheda town, as the bird would fly, in rural County Louth. This appeal site forms part of a larger field and is nestled into its north easternmost corner. The site is bound by the restricted in width and poorly surfaced L-63121-0 Class 3 public road on its eastern side that serves a mixture of agricultural land, a farmstead as well as a number of one-off houses. Deep drainage ditches run along the roadside boundary and along the field boundaries in this area with the landscape being typical of a rolling drumlin landscape but at this locality having an open and exposed character.

## 2.0 Proposed Development

2.1. Planning permission is sought for the construction of a dwelling house (Note: Gross Floor Space of 327m<sup>2</sup>); domestic garage (Note: Gross Floor Space of 73m<sup>2</sup>), waste water treatment system and polishing filter percolation area, new vehicular entrance, provision of a private well for potable water supply, together with all associated site development works.

2.2. This application is accompanied by the following documentation:

- Site Characterisation Report.
- Qualifying Criteria Form for One Off Rural Housing and accompanying documentation.
- Letter of Consent.

## 3.0 Planning Authority Decision

### 3.1. Decision

3.1.1. On the 28<sup>th</sup> day of October, 2021, the Planning Authority decided to **refuse** planning permission for the development set out under Section 2.1 above for the following stated reasons:

“1. *The proposed site, by reason of its location would result in further encroachment of physical development in this area of high scenic landscape and would further exacerbate the existing pattern of piecemeal development in the immediate vicinity. In addition, the development includes the removal of the entire roadside boundary (c.75m) which would result in further adverse visual impact along this public road resulting in a very open and exposed site. The visual input of the proposed dwelling, garage and associated site development works would appear unduly conspicuous and would not assimilate in this scenic rural landscape.*

*Accordingly, the proposed development would be contrary to Policy SS 26 of the Louth County Development Plan 2015-2021 which requires the siting of one-off dwellings is such that it does not detract from the rural character of the landscape or the visual amenities of the area and is consistent with the document Building Sensitively and Sustainably in County Louth; Policy SS25 (affect on existing trees and hedgerow) and Policy SS60 (impact on existing roadside boundaries). As such the development would be contrary to the proper planning and sustainable development of this area.*

2. *The design of the proposed dwelling, by reason of the proposed floor area (327sqm) is contrary to Policy SS51 of the Louth County Development Plan 2015-2021 which limits the maximum cumulative gross floor area within Development Zone 2 to 220sqm. As such the dwellinghouse would be contrary to the proper planning and sustainable development of the area and would set an undesirable precedent for further such development.”*

## 3.2. Planning Authority Reports

### 3.2.1. Planning Reports

The Planning Authority's **Planning Officer's report**, dated the 26<sup>th</sup> day of October, 2021, is the basis of their decision and it includes the following comments.

- The applicant has demonstrated that they qualify for a rural dwelling at this locality.
- The applicant has an application for a dwelling house on appeal with the Board.
- Concerns are raised in relation to the extensive removal of hedgerow proposed.
- The size of the dwelling is inappropriate and contrary Development Plan.
- Concludes with a recommendation to refuse permission.

### 3.2.2. Other Technical Reports

**Infrastructure:** No objection, subject safeguards.

**Environment:** No objection, subject to safeguards.

## 3.3. Prescribed Bodies

3.3.1. None.

## 3.4. Third Party Observations

3.4.1. The Planning Authority received two Third Party observations during the course of its determination. One is made by the observer to this appeal case and the other is made by a local councillor which essentially supports the proposed development as well as outlines the applicants ties to this rural locality.

## 4.0 Planning History

### 4.1. Site

4.1.1. None.

### 4.2. Relevant Appeal Cases

4.2.1. **ABP-311025-21 (P.A. Ref. No. 21707):** On appeal to the Board planning permission was **refused** for a development consisting of the construction of a dwelling house,

detached garage, waste water treatment system, percolation area together with all associated site works for three reasons which can be summarised as follows:

- 1) Failure to demonstrate economic and/or social need to live in a rural locality therefore contrary to local through to national planning policy provisions.
- 2) The proposed development was considered to be an inappropriate and suburban form of piecemeal development which would result in further intrusive encroachment of physical development into the open countryside.
- 3) It was considered that the proposed development would give rise to a traffic hazard and endanger public safety due to the substandard lane access serving it.

Of note this appeal relates to a First Party appeal made by the same First Party Appellant as this case.

Location of site: Rathdaniel, Tinure, Co. Louth (Note: c4.7km to the north of the site as a bird would fly).

Date of Decision: 24<sup>th</sup> day of January, 2022.

4.2.2. **ABP-309178-21 (P.A. Ref. No. 20/894):** On appeal to the Board planning permission was **refused** for a development consisting of single storey dwelling house, with proprietary wastewater treatment system, construction of new garage/outbuilding for domestic use and all associated site development works. The reasons for refusal can be summarised as follows:

- 1) Failure to demonstrate economic and/or social need to live in a rural locality therefore contrary to local through to national planning policy provisions.
- 2) The proposed development was considered to be an inappropriate backland development that would result in further intrusive encroachment of physical development into the open countryside militating against its preservation and resulting in an undesirable precedent.
- 3) Prejudicial to road safety due to inadequate sightlines.

Location: Balgaltern, Drogheda, Co. Louth (Note: c0.9km to the south east of the site and on the opposite side of the M1 corridor).

Date of Decision: 24<sup>th</sup> day of May, 2021.

## 5.0 Policy & Context

### 5.1. Development Plan

- 5.1.1. The Louth County Development Plan, 2021-2027, came into effect on the 11<sup>th</sup> day of November, 2021. Under Map 3.1 of the said plan the site is located in a rural area under urban influence (Rural Category 1) and under Map 3.2 the site is located within Rural Policy Zone 2 land. Applicants for one-off dwellings in Rural Policy Zone 2 are required to meet the qualifying criteria set out in Table 3.5 of the said Plan.
- 5.1.2. Section 13.9 of the Development Plan deals with the matter of housing in the open countryside. With Section 13.9.1 setting out that countryside is a valuable resource that provides a scenic landscape enjoyed by residents and visitors, and farmland that delivers high quality produce. It also sets out that *“whilst this Plan acknowledges the desire of local residents to live in the rural area, the provision of one-off housing in the open countryside must be carefully managed in order to protect the landscape and countryside for future generations to work in and enjoy”*.
- 5.1.3. Section 13.9.10 of the Development Plan deals with Garages and Outbuildings in the Countryside. It sets out that: *“garage will normally be positioned to side or rear of the dwelling and will be designed and finished in materials that match the dwelling. The design and scale of any garage shall be proportionate to the dwelling”*.
- 5.1.4. Section 13.9.19 of the Development Plan states: *“applicants for one-off rural housing will be required to demonstrate compliance with the criteria relevant to the specific Rural Policy Zone in which the application site is to be located. The qualifying criteria for each policy zone is outlined in Section 3.17.4 of Chapter 3 ‘Housing”*.
- 5.1.5. Section 13.20.3 of the Development Plan deals with Domestic and Commercial Wastewater Treatment and states that: *“domestic wastewater treatment plants and percolation areas must comply with the Code of Practice Domestic Waste Water Treatment Systems (Population Equivalent ≤10) (EPA, 2021) or any subsequent updated guidance”*.
- 5.1.6. Section 13.16.17 of the Development Plan deals with Entrances and Sightlines. It states that: *“a well-designed access is important for safety and convenience of all road users”*.

- 5.1.7. Section 8.11 of the Development Plan deals with the matter of hedgerows and sets out that there will be a presumption other than in exceptional circumstances against their removal.
- 5.1.8. Section 13.16.17 of the Development Plan deals with the matter of entrances and sightlines.
- 5.1.9. Table 13.13 of the Development Plan sets out the requirements for entrances onto various categories of roads and for local roads requires a sightline of 75m from a 3m setback from the edge of the carriageway.
- 5.1.10. Section 13.19 of the Development Plan deals with the matter of Heritage.

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

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

**5.3. National**

- 5.3.1. **National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government, (2018):** Of relevance to this appeal case is National Policy Objective 19. This national policy objective refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence i.e., commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations. In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.
- 5.3.2. **Sustainable Rural Housing Guidelines, (2005):** The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures. To ensure that the needs of rural communities are identified in the



development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated. Of relevance to this appeal case is that the site is located in an area classified as an under **Strong Urban Pressure**. Section 3.3.3 of these guidelines deals with 'Siting and Design'.

5.3.3. **Code of Practice** – Domestic Waste Water Treatment Systems (Population Equivalent  $\leq 10$ ), 2021.

5.3.4. The **Development Management Guidelines for Planning Authorities**, June, 2007.

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

5.4.1. This appeal site does not form part of, nor does it adjoin any European designated site. The nearest European sites are:

5.4.2. The Special Area of Conservation: River Boyne & River Blackwater (Site Code: 002299) which is situated c1.99km to the south of the site and the Special Areas of Protection: River Boyne & River Blackwater (Site Code: 004232) which is situated c2.7km to the south.

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

5.5.1. Having regard to nature, scale, and extent of the proposed development, which essentially consists of the construction of a dwelling, an access lane, wastewater treatment system and associated site works of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

### 6.0 **The Appeal**

#### 6.1. **Grounds of Appeal**

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

- The appellant is of the view that his application was judged unfairly.
- The site meets the criteria of the Development Plan for such a development.

- The appellant should have been given the opportunity to address the concerns of the Planning Authority prior to a decision been made.
- There is not a density or encroachment of housing in this area.
- The appellant is happy to keep the hedgerow but it's their own vehicle entrance policies that requires its removal.
- A new native hedgerow would be planted in place of the removed hedgerow. As such the argument in relation to the loss of the hedgerow is unwarranted.
- The appellant would have been happy to revise the house design had he been given an opportunity to do so.
- This application has not been considered equally with regard to other planning applications within this local area which have been permitted.
- The site is an ideal to build a dwelling given its proximity to his parents' home.
- The Planning Authority did not provide an opportunity for them to carry out a traffic survey so that a relaxation of the sightlines may have been possible.
- This application is practically a mirror image of P.A. Ref. No. 18/964 on the opposite side of the lane.
- The Board is sought to overturn the Planning Authority's decision.

## 6.2. Planning Authority Response

6.2.1. The Board received the Planning Authority's response on the 7<sup>th</sup> day of December, 2021, which can be summarised as follows:

- The site forms part of a much larger agricultural field and the proposed development requires the removal of the full extent of the roadside hedgerow and would result in only one existing boundary remaining in an open landscape of high scenic amenity.
- This rural location for a dwelling is considered to be *ad hoc* and has no context in relation to existing dwellings along this Class 3 local road.
- This development fails to comply with development objective HOU 42 of the recently adopted Louth County Development Plan, 2021 to 2027. This requires

such developments to be designed and located so as to integrate into the local landscape and in a manner that does not negatively impact or erode it.

- While the achievement of the required sightlines to serve the proposed development necessitates the removal of extensive hedgerow this does not mean that its removal is acceptable.
- It was not considered appropriate to request further information in relation to design matters through to the overall size of the proposed dwelling when the principle of this development was not considered to be acceptable.
- The proposed development represents an inappropriate form of development in the rural area, was contrary to the previous and is contrary to the recently adopted Development Plan.
- In addition, the applicant does not qualify in relation to local needs for a one-off dwelling on land subject to Rural Policy Zone 1.
- The proposed development should be refused.

### **6.3. Observations**

6.3.1. On the 15<sup>th</sup> day of December, 2021, an observation was received from a Christine Carton, which can be summarised as follows:

- The observer, who is the appellants mother, supports this application.
- Her son is from a farming background and has lived in a rural community most of his life.
- The family home was completed in 2000 on land purchased by the observer's husband. Over the intervening decades a number of families have built house on the cul-de-sac lane that serves their home.
- The decision made by the Planning Authority is subjective and there is precedent for this type of development in this area.
- This application would not result in any undesirable precedent.
- Her son complies with the local needs criteria.

- The Board should consider this application on the Louth County Development Plan 2015 to 2021 not the Development Plan that superseded it. The recent Development Plan changes should have no impact on her son's application.
- The Planning Authority's Planning Officer should have addressed this application and not made comment upon an application made by her son for a dwelling house that is currently under appeal (Note: ABP-311025). It is contended that her son had no option but to submit another application as there was no guarantee that his appeal case would have resulted in a successful outcome. Alongside he wished to lodge an application for a rural dwelling prior to the changes in the local planning provisions in relation to this type of development.
- The Board is sought to overturn the Planning Authority's decision in this case.

6.3.2. On the 1<sup>st</sup> day of December, 2021, an observation was received from a Jim Garvey, which can be summarised as follows:

- The land on which the proposed development is sought is owned by the observer's father who had entered into an agreement to sell a plot of land, subject to planning permission for the purpose of allowing the appellant to build a home. However, the proposed development is objected to on the basis that the plot of land represented is larger than what was outlined in the sale agreement. In addition, the house proposed is much larger and the draft plans are not reflective their agreement. The observers father, therefore, will not be proceeding with the transfer of the lands into the appellant's name.
- The Board is requested to have regard to this in their consideration of this case.

## 7.0 **Assessment**

### 7.1. **Introduction**

7.1.1. Having regard to the nature of the proposed development sought under this application, relevant planning policy provisions and the issues raised on file, I consider the key planning issues relating to the assessment of this appeal case relate primarily to the Planning Authority's given reasons for refusal. I propose to consider these in the context of my assessment under the following broad headings:

- Consent to Carry Out the Proposed Development

- Procedural Matters
- Principle of Development
- Visual Amenities
- Bio-diversity Impact/Loss of Hedgerows

7.1.2. The matter of 'Appropriate Assessment' also requires examination. Outside of the proliferation of proprietary waste water treatments and the lack of demonstration that a safe as well as sustainable water supply can be achieved on site to serve the proposed development sought under this application, I consider that no other substantive planning issues arise.

7.1.3. On the matter of water and wastewater servicing of the proposed development given the proliferation of one-off dwellings on un-serviced sites with no group water scheme, the intensive agricultural activities of the surrounding rural landscape through to the presence of deep drainage ditches along the roadside boundary and included within the field boundaries of the site as well as the fields within the vicinity should the Board be minded to grant permission these matters would require further examination.

7.1.4. This recommendation is based on inspection of the site and its setting with the ground levels being completely waterlogged, evidence of water ponding, high water tables in ditches through to presence of water loving plants. It is also based on the fact that the documentation on file do not demonstrate compliance with the EPA Code of Practice Domestic Waste Water Treatment Systems, Population ≤ 10 (2021) which I note is a requirement under policy objective IU 18 of the Development Plan. Alongside the fact that this rural location contains a high proliferation of one-off dwellings dependent on wastewater treatment systems and private wells.

## **7.2. Consent to Carry Out the Proposed Development**

7.2.1. The Board received an observation made on behalf to the legal owner of the site indicating that the consent to carry out the proposed development on their land has been withdrawn. I also note that it indicates that the submitted application is based on a larger site area than that agreed with the applicant when consent was initially given to sell a site subject to a grant of planning permission.

7.2.2. I consider that the Board has no statutory power to adjudicate upon matters relating to land title and ownership due to these matters being civil in nature and therefore can

only be resolved by agreement between the relevant parties involved or the civil courts. With this being made clear under Section 5.13 of the Development Management Guidelines which state that: *“the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land; these are ultimately matters for resolution by the courts”*.

7.2.3. Notwithstanding, consistent with the requirements of Section 22 of the Planning & Development Regulations, 2001, as amended, there is an onus on an applicant to submit the written consent of legal owner/legal owners as the case may be. I am cognisant that a letter of consent was submitted as part of the application itself but as set out in the observation received by the Board this consent appears to have been withdrawn.

7.2.4. While I am cognisant that any decision on a planning application does not purport to determine the legal interests held by an applicant or indeed any other interested party or otherwise, I am not convinced based on the information provided with this application, that the applicant has demonstrated that they have sufficient interest in the lands or the relevant consent in place to carry out the development sought under this application.

7.2.5. I also consider given the substantive local needs through to visual amenity concerns the proposed development gives rise to are such that it would not be appropriate to request additional information from the applicant on either the matter of consent or indeed the disputed site area/dimensions.

7.2.6. Given as discussed in my assessment below that these are concerns that in their own right warrant refusal of the proposed development sought under this application.

7.2.7. On this point I note that the Development Management Guidelines for Planning Authorities, June, 2007, states that: *“further information may only be sought where it is necessary for the determination of the application”*; and, that: *“requests for further information under Article 33 on one aspect of a proposal should not be sought where there is a fundamental objection to the proposed development on other grounds; applicants should not have to suffer unnecessary delay or expense if a refusal is likely”*.

7.2.8. Should the Board be minded to favourably consider the proposed development I recommend that it first seeks that these concerns in relation to consent and site area/dimensions are first clarified.

### **7.3. Procedural Concerns**

- 7.3.1. The appellant raises procedural concerns in relation to the Planning Authority's handling of this application and consider that Planning Authority could have sought their concerns be addressed by way of additional information prior to the making of a final decision on the proposed development. In relation to these concerns, I note that the Board does not have an ombudsman type role in dealing with the contended procedural irregularities the appellant and the observer raises in their submissions to the Board. In this regard, I note that the Boards remit in their adjudication of this appeal case is to carry out a *de novo* consideration of the proposed development in accordance with the proper planning and sustainable development of the area only.
- 7.3.2. Further on the matter of seeking additional information as mentioned in the previous section of this report further information may only be sought where it is necessary for the determination of the application. This was not the circumstance for the Planning Authority in this case who had formed the view following consideration of the proposed development based upon the proper planning and sustainable development as provided for in local through to national planning provisions and guidance that there were other substantive concerns that in themselves warranted refusal of the proposed development. With such concerns being ones that could not be overcome by a request of further information to the applicant.
- 7.3.3. One of the observers to this appeal seek that the Board disregard to recently adopted Development Plan and determine this application under the previous Development Plan. Alongside permit the proposed development based on the fact that the Planning Authority has permitted similar developments on this rural road and in this locality.
- 7.3.4. On this matter I clarify that my assessment below is based upon all relevant local through to national planning provisions and guidance that are in place at the time my report was prepared and on its own merit based on the proper planning and sustainable development of the area. This is in accordance with planning law.

### **7.4. Principle of the Proposed Development**

- 7.4.1. The appeal site is located in an area defined as being under strong urban influence as defined in the Sustainable Rural Housing Guidelines for Planning Authority's, 2005, and under the National Planning Framework, 2018. This is due to a number of locational factors including but not limited to its proximity to a number of large urban

areas, including Drogheda, Dundalk, Navan, Ashbourne, Dublin and proximity to the M1 and N2 corridors which provides easy access to larger settlements, in particular Dublin. Indeed, all of the rural areas of County Louth fall within the category of 'rural areas under strong urban influence'.

- 7.4.2. National Planning Objective 19 is of particular relevance in that it seeks to direct urban generated housing need into towns and villages. It advocates that a clear distinction is made between areas under urban influence and elsewhere. In addition, it advocates in rural areas under urban influence that the provision of single housing in the countryside should be based on the core consideration of demonstrable economic or social need to live in a rural area, subject to safeguards. Including but not limited to design and siting considerations.
- 7.4.3. Further, the Regional Spatial Economic Strategy for the Eastern & Midland Region also set out that Local Authorities shall manage urban growth in rural areas under strong urban influence by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.
- 7.4.4. The Development Plan has a presumption against one-off rural housing at rural locations identified as being under strong urban influence and in areas of high scenic quality except in cases where the applicant can demonstrate they meet the relevant qualifying criteria.
- 7.4.5. The documents accompanying this application indicates that the applicant seeks the rural dwelling house under Category 1 and 2 of the previous Development Plans rural settlement strategy. These categories have not been carried through into the Louth County Development Plan, 2021-2027, and the applicant in this case is subject to demonstrate that they meet the one of the qualifying criteria set out under Table 3.5 of the Development Plan. This is based on the fact that the site is situated on land zoned 'Rural Policy Zone 2 – Area under Strong Urban Influence'.
- 7.4.6. In relation to the qualifying criteria set out under Table 3.5 of the Development I propose to examine these in turn as follows:



- 7.4.7. Criteria 1: This criterion relates to persons engaged in full time agriculture and sets out that this includes livestock, poultry, dairy, tillage farming, bloodstock, equine related activities, forestry, and horticulture. It also sets out various information that is required to support an applicant seeking a rural one-off house under this criterion. The applicant in this case provides no evidence that they are engaged in full time agriculture and therefore they do not meet this particular criterion to support their local need for the proposed development sought at this rural locality.
- 7.4.8. Criteria 2: This criterion relates to a person whose business requires them to reside in the rural area due to the nature of the operations of the business being specific to the rural area. It also sets out various information that is required to support the same. The applicant has provided no evidence that would support that they have a business that requires them to reside in the rural area. Therefore, the applicant does not meet this particular criterion to support their local need for the proposed development sought at this rural locality.
- 7.4.9. Criteria 3: This criterion relates landowners including their sons and daughters who have demonstrable social or economic ties to the area and are seeking to build their home. The applicant does not have this circumstance and therefore does not meet this criterion.
- 7.4.10. Criteria 4: This criterion relates to a person who is seeking to build their first house in the rural area and has a demonstrable economic or social requirement for such a development. It sets out that social requirement will be someone who has resided in the rural area of Louth for at least 18 years prior to any application for planning permission and that they must demonstrate a rural housing need and shall not have sold a residential property in the County prior to making an application. While it would appear that the applicant has resided in the rural area of Louth for at least 18 years, they have not demonstrated an economic or social rural housing need as opposed to a want, desire and hope to build in a rural area of Louth. Further, they have provided no affidavit in relation to not having sold a residential property prior to making an application and they have recently been refused planning permission for a similar development in the Townland of Rathdaniel, Tinure, Co. Louth, on appeal to the Board (Note: ABP-311025-21/P.A. Ref. No. 21707).

- 7.4.11. Criteria 5: This criterion relates to an emigrant who was resident of the area and wishes to return to the area to live. This is not the applicant's circumstance and therefore they do not meet this criterion.
- 7.4.12. Criteria 6: This criterion relates to a person who are required to live in a rural area, for exceptional health reasons. This is not the applicant's circumstance and therefore they do not meet this criterion.
- 7.4.13. Criteria 7: This criterion relates to residents who have demonstratable social ties to the area and are providing care for an elderly person(s) or a person(s) with a disability who lives in an isolated rural area and who does not have an able-bodied person residing with them. It also seeks that the applicant demonstrate why the existing property cannot be extended or modified to provide residential accommodation for the carer through to the site must be adjacent to the dwelling in which the elderly person(s) or person(s) with the disability resides. While the applicant contends that they are 'preparing' to look after their parents as they age there is no evidence to base that his parents need the care of an abled bodied person. In addition, the site is not adjacent to the parent's home nor has the applicant demonstrated that his parent's property cannot be modified or extended to provide additional residential accommodation for them as their carer.
- 7.4.14. Criteria 8: This criterion relates to a person who has been a resident for at least 10 years that previously owned a home and is no longer in possession of that home due to the home being disposed of following legal separation/divorce/repossession and can demonstrate a social or economic need for a new home in the rural area. The applicant has not demonstrated by way of the information on file that this is their circumstance and therefore they do not meet this criterion.
- 7.4.15. Based on the above the applicant has not demonstrated that they qualify with one of the eight criteria set out under the applicable Rural Policy Zone 2 as provided for under Table 3.5 of the Development Plan.
- 7.4.16. As a result the proposed development sought under this application fails to accord with the requirements of Policy Objective HOU 41 which sets out that the Council will seek: *"to manage the development of rural housing in the open countryside by requiring applicants to demonstrate compliance with the Local Needs Qualifying Criteria relative to the Rural Policy Zone"*.

- 7.4.17. Further, Section 3.17.1 of the Development Plan sets out that: *“in achieving a balance of supporting rural communities and protecting the countryside, consideration must be given to the impact of the pattern of development associated with one off housing on the climate and environment”*.
- 7.4.18. In addition this section of the Development Plan states that the: *“sporadic nature of one off housing results in over-dependence on the car, with limited opportunities for people to walk or cycle due to the distance between homes and school, work or local services. The proliferation of individual septic tanks and waste water treatment systems is also impacting on soil and water quality”*.
- 7.4.19. In this regard, the proposed development is sought for an area under strong urban pressure and where there is a proliferation of one-off rural dwellings, as previously said dependent upon private wells, proprietary wastewater treatments systems. Alongside are remote from other synergistic land uses, services, amenities through to facilities such developments are dependent upon. Therefore, this development is one that would be highly reliant upon the use of private vehicles and onto an immediate public network of substandard local roads where safe passage between two vehicles is not always possible. This immediate road network I observed had a steady stream of traffic and a proliferation of entrances serving one-off rural dwellings.
- 7.4.20. With this being the case the proposed development can not be considered as one that is in the public good as it is not a type of development that represents sustainable residential development at a time where local through to national planning provisions seek sustainable resilient to climate change development which includes but is not limited to compact development of settlements.

## **7.5. Visual Amenity Impact**

- 7.5.1. The first reason for refusal given by the Planning Authority in their decision notification considered that the proposed site by reason of its location would result in further encroachment of physical development in this area of high scenic landscape and would further exacerbate the existing pattern of piecemeal development in the immediate vicinity.
- 7.5.2. The site forms part of a landscape that under the Development Plan is designated an Areas of High Scenic Quality (AHSQ). In this regard, Section 8.12.2 of the Development Plan indicates that whilst such areas do not possess the exceptional

natural beauty and landscape quality of an Area of Outstanding Natural Beauty, nevertheless they add to significantly to the stock of natural scenic landscapes within the County. These areas are listed in Table 8.13 and illustrated on Map 8.15 of the Development Plan.

- 7.5.3. In addition, it would appear that the site which occupies a high point within its landscape setting is located in the vicinity of VP26, i.e., Newtown Monasterboice views towards Monasterboice Tower, as indicated in Map 8.16 of the Development Plan.
- 7.5.4. In relation to views and prospects of Special Amenity Value Section 8.12.3 of the Development Plan sets out that these areas are of enormous amenity value to tourists and residents alike, contributing to the quality of life and constituting a valuable economic asset. It sets out that: "*the protection of this asset is therefore of importance in developing the potential of the County*" and to manage change so that: "*any change is positive in its effects thereby ensuring that the landscape is protected*".
- 7.5.5. Of note policy objective NBG 37 of the Development Plan states that the Council will seek: "*to protect the unspoiled rural landscapes of the Areas of High Scenic Quality (AHSQ) from inappropriate development for the benefit and enjoyment of current and future generations*". In addition, policy objective NBG 38 of the Development Plan indicates that the Council will seek to protect and sustain the established appearance, character of views and prospects that contribute to these landscapes of high scenic quality distinctive quality.
- 7.5.6. The site chosen is located at a high point within this drumlin landscape setting and forms part of what is recognised in the Development Plan as highly sensitive to change landscape whose visual quality and intrinsic character can be diminished by inappropriate development. To date it has already been diminished by a proliferation of one-off rural houses of varying architectural design and quality with sites deliberately chosen to make the most of the areas scenic views and thus occupying highly visible points within their wider landscape setting.
- 7.5.7. The proposed development, if permitted, would add to further cumulative diminishment of this sensitive to change and high scenic quality rural landscape through the overall positioning on an elevated and open site within a rural drumlin landscape. Alongside by way of the proposed highly visible and dominant in-built form, massing, height, and palette of external materials scale of the proposed dwelling. Together with the

substantive size and height of the detached garage, the significant loss of existing mature roadside boundaries that would be required to facilitate safe access onto the public road network through to the lack of any substantive existing natural features within the site and its vicinity to help to assimilate the proposed development.

- 7.5.8. Further, the proposed landscape scheme is of poor quality and does not provide a site appropriate and setting respective scheme that takes cognisance of reducing the visibility of the proposed development as viewed within its open rural landscape setting. Through to it has had little regard to reducing biodiversity loss as part of its overall design.
- 7.5.9. In relation to the second reason for refusal which related to the size of the proposed dwelling I consider that the proposed 327m<sup>2</sup> 2-storey dwelling and 73m<sup>2</sup> dormer height garage are excessive in an exposed and open landscape. Notwithstanding, the restrictions in size of floor area has not been carried through from the previous Development Plan, 2015-2021, into the recently adopted Development Plan.
- 7.5.10. Based on the above considerations I concur with the Planning Authority that the proposed development, if permitted, would militate against the preservation of this area of high scenic quality in a manner that would add to the diminishment of this landscape by the proliferation of this *ad hoc* and piecemeal residential development which would result in further encroachment of suburban type of residential developments in rural locations where they have no tangible links with the predominant functioning of this rural landscape.

## 7.6. **Biodiversity Impact - Loss of Hedgerows**

- 7.6.1. As part of the Planning Authority's first reason for refusal the Planning Authority raised concerns with regards to the loss of roadside boundaries to facilitate the proposed development and it was considered that this added to the adverse visual amenity impacts that would arise from the proposed development.
- 7.6.2. Under the Development Plan Section 8.5 sets out that the Council will seek to protect biodiversity value in non-designated sites. It sets out that these include hedgerows with these natural features providing vital links and corridors that form part of a critical component of a functioning ecological network. This section of the Development Plan also acknowledges that their protection is advocated in Article 10 of the Habitats Directive and under the Planning and Development Act, 2000, as amended.

- 7.6.3. In addition, it sets out policy objective NBG 9 which states that the Council will seek: *“to ensure that proposals for development, where appropriate, protect and conserve biodiversity sites outside designated sites and require an appropriate level of ecological assessment by suitably qualified professionals to accompany development proposals likely to impact on such sites”*.
- 7.6.4. Section 8.11 of the Development Plan also recognises the contribution of hedgerows to Louth’s natural landscape character and biodiversity. It states that together with trees and woodlands: *“they provide visual amenity in rural and urban environments, shelter and clean air, important habitats for many species of wildlife and as high biodiversity habitats they are key for both climate mitigation and adaption measures, playing a significant role in carbon storage”*.
- 7.6.5. In relation to hedgerows specifically it reiterates this important contribution and also acknowledges that these serve as important habitat and wildlife corridors for the movement and distribution of flora and fauna through the landscape. It further sets out that they are a habitat for insects, nesting birds, assist small mammals and bat species as well as that they contribute to the natural heritage and visual amenity of the area. Crucially it sets out that there will be a presumption against their removal.
- 7.6.6. In this regard, I note that policy objective NBG 31 sets out that the Council will only in exceptional circumstances allow the removal of hedgerows where these are required in order to facilitate development. This however is subject to safeguards and where this removal includes trees these will be replaced at a ratio of 5:1.
- 7.6.7. Of further note Section 8.14.1 includes hedgerows as part of the green infrastructure in the county and sets out their importance alongside other green infrastructure that they are interconnected with. It also states that: *“the conservation of ecological infrastructure such as hedgerows and riparian corridors facilitates and promotes the development of a ‘network’ of sites’ which strengthen and enhance out green infrastructure and facilitate the migration and exchange of species between conservation areas”*.
- 7.6.8. In addition, policy objective ENV 38 of the Development Plan sets out that the Council will seek to retain and protect significant stands of existing hedgerows and seek increased planting of native trees, where appropriate, in new developments; and, policy objective ENV 39 states that the Council will: *“protect and preserve existing*

*hedgerows in new developments, particularly species rich roadside and townland boundary hedgerows, and where their removal is necessary during the course of road works or other works seek their replacement with new native hedgerows of native species indigenous to the area”.*

- 7.6.9. While I acknowledge that the removal of c75m of mature hedgerow is required to facilitate this development in terms of ensuring that the entrance serving the proposed site meets the sightline standards set out under Section 13.16.17 and Table 13.13 of the Development Plan I firstly note that the applicant has not demonstrated any exceptional need for the proposed development.
- 7.6.10. This is in my view quite clear in terms of the assessment of whether or not they qualify for a rural dwelling in Rural Policy Zone 2 under Table 3.5 eight criteria. Secondly, this application is not accompanied by any robust examination of biodiversity loss, any mitigation measures to reduce this loss through to such an examination informing the replacement roadside boundary through to the landscaping scheme to screen the visual impact of such a sizeable in built form, mass, scale and height 2-storey dwelling in what is open and exposed landscape setting where there would be little in the way of natural features or otherwise to screen it.
- 7.6.11. Indeed the landscaping including the roadside replacement planting details are very generic and the overall landscaping scheme itself would not be sufficient in my view to visually screen the proposed development successfully for the short to long term. With the level of landscaping requiring to provide some level of screening not being one that one provide any effective screening mitigation for a considerable length of time.
- 7.6.12. Based on the above considerations I concur with the Planning Authority that the loss of hedgerow would add to the adverse visual impact of the proposed development in an open and exposed drumlin landscape that has been significantly diminished by the proliferation of such developments. It would also result in the loss of important biodiversity and green infrastructure within what is also an intensively farmed landscape and this loss would not be overcome by the landscaping scheme proposed as part of this application.

## 7.7. **Appropriate Assessment**

- 7.7.1. Having regard to the nature and scale of the proposed development, I am satisfied 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.

## 7.8. **Other Matters Arising**

- 7.8.1. **Access:** Having visited the site I raise a concern in relation to the capacity of the lane upon which access onto the public road network is dependent on due to its restricted width, poor surfacing through to the number of residential and agricultural properties it serves. I do not consider it has capacity to absorb the albeit low volume of traffic this development would generate and any capacity it has should be safeguarded to developments that support the rural function of these lands. Moreover, the proposed development would by way of resulting in additional quantum of traffic would add to the cumulative diminishment of the immediate public road network that has arisen from the proliferation of one-off dwellings and would further diminish its function to absorb its existing road users. I am also not satisfied that the applicant has demonstrated safe access onto this stretch of road in terms of sightlines and given this roads restricted width, dense hedging and deep drainage ditches.

## 8.0 **Recommendation**

- 8.1. I recommend that planning 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 the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April 2005, and in the Louth County Development Plan, 2021-2027, by way of its Rural Policy Zone 2, where housing is restricted to persons demonstrating local need in accordance with the Table 3.5, it is considered that the applicant does not come within the scope of the housing need qualifying criteria for a rural one-off dwelling house at this location.



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

It is therefore considered that the applicant does not come within the scope of either the economic or social housing need criteria set out in the overarching National Guidelines of the relevant Local Housing Need Qualifying Criteria of the Development Plan.

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

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

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

2. The proposed development, by reasons of its elevated and open rural landscape setting that forms part of a landscape setting that is afforded protection as an Area of High Scenic Quality (AHSQ) would constitute an inappropriate and suburban form of ad hoc piecemeal development and would result in a further intrusive encroachment of physical development within a landscape setting that has been diminished by the proliferation of one-off dwellings. The proposed development, in itself, taken together with the extensive loss of roadside boundary, the

inappropriate design, layout and overall disconnect with safeguarding the visual amenities of its setting, and in conjunction with other additional dwellings along a local road would militate against the preservation of this rural environment. It would be contrary to policy objective NBG 37 of the Louth County Development Plan, 2021 to 2027, which requires the protection of rural landscapes of the Areas of High Scenic Quality (AHSQ) from inappropriate development for the benefit and enjoyment of current and future generations and policy objectives ENV 38 as well as ENV 39 which requires the protection and preservation of existing hedgerows where appropriate in new development. As well as only permitting their removal in exceptional circumstances where their removal is necessary. The applicant in this case has no exceptional circumstance that would warrant the extensive removal of hedgerows and their further destruction would together with the suburban response to the roadside boundary would further diminish the visual amenities of the area. It is therefore considered that the proposed development would be contrary to these policy objectives of the Louth County Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

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Patricia-Marie Young  
Planning Inspector - 10<sup>th</sup> day of March, 2022.