



An  
Bord  
Pleanála

## Inspector's Report

### ABP-312887-22

#### Development

The development comprises of the retention of the single-storey domestic garage as previously constructed and converted to residential use, the retention of the current use of same as a one bed space community dwelling including associated alterations to the front (east) and side (south) elevations and all associated site works above and below ground associated with the retained development.

#### Location

The Paddock, Borranstown,  
Ashbourne, Co. Dublin.

#### Planning Authority

Fingal County Council

#### Planning Authority Reg. Ref.

F21A/0649

#### Applicant(s)

Nua Healthcare

#### Type of Application

Permission

#### Planning Authority Decision

Refuse

#### Type of Appeal

First Party

**Appellant(s)**

Nua Healthcare

**Date of Site Inspection**

17<sup>th</sup> August 2022

**Inspector**

Colin McBride

## **1.0 Site Location and Description**

- 1.1. The appeal site, which has a stated area of 0.51 hectares, is located in the townland of Borranstown approximately 4km to the north of Ashbourne and in the rural area of the county. The appeal site is located on the western side of the public road. The appeal site is occupied by a dormer style dwelling. There is a separate outbuilding to the north of the existing dwelling and adjacent the northern site boundary (subject to application for retention. To the north is a single-storey dwelling and there is agricultural lands to the south and west.

## **2.0 Proposed Development**

- 2.1. The development comprises the retention of the single-storey domestic garage as previously constructed and converted to residential use, the retention of the current use of same as a one bed space community dwelling including associated alterations to front (East) and side (South) elevations and all associated site works above and below ground associated with the retained development. The structure for retention has a floor area of 62.3sqm, a ridge height of 6.164m and features pitched roof with external finishes similar to the existing dwelling on site (stone and render).

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Permission refused based on two reasons.

1. The site is located within the 'RU' zoning objective under the Fingal Development Plan, 2017-2023, the objective of which is 'to protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage' and in a 'Rural Area under Strong Urban Influence' in the 'Sustainable Rural Housing Guidelines for Planning Authorities' (DoEHLG, 2005). The applicant has not demonstrated their eligibility to be considered for a dwelling in a rural area of Fingal. The development of domestic garage to residential use for which retention permission is sought would contravene

materially the rural settlement strategy of the Fingal Development Plan 2017-2023 as it relates to Objective RF34 and 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. Having regard to the limited separation distances between the subject structure to be retained and the existing dwelling on site, the absence of adequate boundary treatment dedicated access and parking, dedicated private open space, and the absence of a dedicated on site wastewater treatment system to serve the development to be retained, it is considered the use proposed for retention would have a negative impact on the amenity of existing and future residents at this location. The development proposed for retention would therefore set an undesirable precedent for other similar forms of development and would be contrary to the proper planning and sustainable development of the area.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

Planning report (01/02/22): The proposal was considered to be contrary rural settlement strategy under the County development Plan and National Planning Framework. The proposal was considered substandard in terms of residential amenity and would set an undesirable precedent. Refusal was recommended based on the conditions outlined above.

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

Water Services (09/12/21): No objection subject to conditions.

Irish Water (21/12/21): No objection.

Transportation Planning (04/01/21): No objection subject to conditions.

### **3.3. Prescribed Bodies**

None.

### **3.4. Third Party Observations**

None.

## **4.0 Planning History**

FS5/019/21: A Section 5, change of use of an existing dwelling for use as a residence for up to 6 persons with intellectual or physical disabilities or mental illness was determined to be exempted development.

F05A/1279: Permission granted for dwelling and associated site works.

F03A/0507: Permission granted for a farm entrance to lands.

F97A/1003: Permission granted for dwelling and retention of entrance.

## **5.0 Policy Context**

### **5.1. Development Plan**

The relevant Development Plan is the Fingal County Development Plan 2017-2023.

The appeal site is zoned 'RU'.

Objective RF34 Permit up to two additional dwellings per farm family in areas with the zoning objective, RU, and one additional dwelling per farm family within areas with the zoning objective GB or HA, where the applicant demonstrates their direct

participation in running the family farm and is considered to have a demonstrated need related to the working of the farm to reside on the family farm.

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.

#### Objective RF09

Encourage the re-use and adaptation of the existing building stock within the Rural Villages.

#### Objective RF10

Promote the provision of essential services for living within the local community including, social, employment and retailing services, health, recreation, leisure amenities and community facilities.

#### Objective RF70

Protect and promote the sustainability of rural living by facilitating rural-related enterprise for rural dwellers.

## 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 third party appeal has been lodged by Nua Healthcae Ltd. The grounds of appeal are as follows...

- The appeal submission outlines the applicants' background indicating that they provide long-stay residential care for people with intellectual and mental health conditions.
- The outlines the need for the accommodation, the specific needs of the resident currently housed in the development.
- The appellant outlines the planning history of the site including the fact that the existing dwelling is in use for residential care and that the existing dwelling has been subject to a section 5 declaration determining that its use as residential care for people with intellectual and physical disabilities is exempted development (Schedule 2, Part 1 of Article 6, Class 14(f)). The appellant notes the proposed development can be used for their clients and carers if permitted and that a condition could be attached requiring the development to be used ancillary to the main house.
- The proposed development as considered to be acceptable in terms of physical impact, with no third party objections/observations and no objection in the Council/Irish Water technical reports.
- The Council's assessment fails to acknowledge the existing of the primary residential care centre on site and that the development is an extension of this use on site. The issue of wastewater treatment was not an issue in the Water Services report.



- The proposal should be granted on the basis that it is an extension of an existing car facility and on this basis application of rural housing policy is not appropriate. The appellant refers to a number of policies (Objective RF09, RF10 and RF70, which the proposal complies with.
- In response to the second reason for refusal the appellant notes that the proposal is ancillary to the existing care use and the no need for independent access, open space or wastewater treatment system. The proposal would not have a negative impact on residential amenity or set an undesirable precedent.

## 6.2. Planning Authority Response

### 6.2.1 Response by Fingal County Council

- The PA have no further comment to make.

## 7.0 Assessment

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

Nature of the proposal/Development Plan policy

Physical Impact

Material Contravention

- 7.2. Nature of the proposal/Development Plan policy:

- 7.2.1 The proposal is described as the retention of the single-storey domestic garage as previously constructed and converted to residential use, the retention of the current use of same as a one bed space community dwelling including associated alterations to front (east) and side (south). The structure in question is within the curtilage of an existing dwelling permitted under ref no. FS5/019/21. This dwelling is

operated by the applicants as a residential care facility for individual with intellectual and physical disabilities and the development was subject to a Section 5 declaration determining the use of the existing dwelling for such is exempted development.

7.2.2 Based on the information on file the development is being used to house an individual with specific needs and a lack of ability to access all parts of the main dwelling due to mobility issues.

7.2.3 The proposal has been assessed on the basis of rural housing policy and as an independent dwelling unit in a rural area (zoned 'RU') and in an area under urban influence. The current use of the dwelling and the proposed development is as a residential care facility and is institutional in nature. The proposed development is within the curtilage of the existing care facility and its use would appear to be ancillary to main use on site. I would consider that assessment of the proposal on the basis of rural housing policy is inappropriate and that the existing use of the main dwelling should be taken into account as well as the fact that the structure for retention is ancillary to this use. I would consider that subject to an appropriate condition confining use of the structure to use ancillary to the main residential care unit, the proposal would be satisfactory in principle and in the context of Development Plan policy.

### 7.3 Physical Impact:

7.3.1 In terms of physical impact the proposed structure for retention is subordinate in scale relative to the main dwelling on site. I would be of the view that the overall design and scale of such is satisfactory in terms of the visual amenities of the area.

7.3.2 The second refusal reason raises concerns regarding the lack of boundary treatment, independent vehicular access and a dedicated wastewater treatment system. I would be of the view that assessment of the structure as ancillary to the main residential care use would mean that these elements are unnecessary as the proposal is not for an independent dwelling house. I am satisfied that based on its

merits and proposed use there is no requirement for the proposal to be separate from the existing dwelling on site and that a condition should be attached in the event of a grant of permission that confines use of the development to uses ancillary to the main residential care facility on site.

7.3.3 The proposal is to use an existing wastewater treatment on site. Based on the information on file the proposal is for single occupant and on this basis such is unlikely to place a significant additional loading on the existing wastewater treatment system.

#### 7.4 Material Contravention:

7.4.1 Permission was refused on the basis that the proposal would contravene materially the rural settlement strategy of the Fingal Development Plan 2017-2023 as it relates to Objective RF34 and RF39. Section 37(2) of the Planning Act is relevant in terms of the Board assessing a case refused on the basis of material contravention.

Under Section 37(2)...

(2) (a) Subject to *paragraph (b)*, the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

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

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

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

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

area, and any relevant policy of the Government, the Minister or any Minister of the Government, or

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

(c) Where the Board grants a permission in accordance with *paragraph (b)*, the Board shall, in addition to the requirements of section 34 (10), indicate in its decision the main reasons and considerations for contravening materially the development plan.

7.4.2 In this case I would consider that rural housing policy under Objective RF34 and RF39 do not apply as the proposal is for a use ancillary to the primary use on site, which is a residential care facility. I would not consider that the proposal is a material contravention of any of the policies of the Development Plan. Notwithstanding such I would consider that 37(2)(b)(ii) would apply in this case in particular that “objectives are not clearly stated, insofar as the proposed development is concerned”. These objectives relate to one-off dwellings and not an ancillary proposal/extension to an existing residential care development as sought in this case.

## **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 a grant of permission subject to the following conditions.

## 10.0 Reasons and Considerations

Having regard to the nature and scale of the proposed development and to the fact it for development that is ancillary to the primary use of the main dwelling on site as a residential care facility and subject to the following conditions, the proposed development would be acceptable in the context of land use policy, would be acceptable in terms of its overall physical scale and be acceptable in terms of the visual amenities of the area and the amenities of adjoining proprietries. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be in accordance with the plans and particulars lodged with the application on, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The proposed development shall be only be used for accommodation/activity ancillary to the residential care use of the main dwelling on site and shall not be sold, leased or rented independently of the main dwelling within whose curtilage it is located.

**Reason:** In the interest of orderly development.

3. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

4. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Colin McBride

Senior Planning Inspector

18<sup>th</sup> August 2022