



An
Bord
Pleanála

Inspector's Report

ABP-313601-22

Development	Retention permission is sought for new first floor extension with pitched roof to existing granny flat & associated site works.
Location	Stepaside Lodge, Burrow Road, Dublin 18, D18 A0P4.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D22A/0143
Applicant(s)	Ben Culligan & Donna Struve.
Type of Application	Retention Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellant(s)	Ben Culligan & Donna Struve.
Observer(s)	1. Louise Harrison. 2. An Taisce.
Date of Site Inspection	18 th day of November, 2022.
Inspector	Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. 'Stepaside Lodge' the appeal site has a stated area of 0.33ha. This elevated and steeply sloped site is located on the western side of Burrow Road, c543m to the west of Stepaside Village and the R117 as the bird would fly, on the foothills of Three Rock Mountain, overlooking the lower-lying lands to the north, east and south east with views towards Ballyogan and beyond, in south County Dublin.
- 1.2. The site contains a two-storey detached dwelling and a detached dormer style building. Both are in separate residential use. These two buildings are centrally positioned towards the rear boundary of the site and served by two steep sloping driveways that open onto the Burrow Road to the east. Views from these entrances onto Burrow Road are very restricted in both directions. This I observed results from the visual obstructions along the roadside boundary of the site on either side of the two entrances and the changing horizontal and vertical curving alignment of the road.
- 1.3. At the time of inspection, I observed that there was a steady movement of traffic in both directions on the adjoining stretch of Burrow Road. With this stretch of road also being of restricted width, containing a solid white line as well as other road markings, signs and with the southernmost entrance, which appears to be the main entrance serving the site, having a road mirror on the opposite side of the road placed into the restricted and steep verge to assist vehicles exiting from this entrance onto the road.
- 1.4. The surrounding area is hilly and undulating. Though it has a rural character there is a significant prevalence of one-off dwellings on individual sites with independent access providing connection to the public road. To the west of the site the grounds steadily rise Ballyedmonduff Road and the upper slopes of Two Rock Mountain and the Dublin/Wicklow Mountains. To the east of the site the settlements of Stepaside and Kilternan with also the M50 corridor in close proximity all on lower ground levels. The site is adjoined by an existing detached dwelling on its southern side, agricultural land to the immediate north and west.

2.0 Proposed Development

- 2.1. **Retention** permission is sought for the new first floor extension with pitched roof to existing granny flat & associated site works.

- 2.2. According to the accompanying Planning Application form the gross floor space of any existing buildings is given as 16.8m²; existing connection to public mains, a new soak pit and new wastewater treatment systems is proposed.
- 2.3. According to the accompanying 'Covering Letter' the existing main house (Stepaside Lodge) has a gross floor area of 219.6m² and the granny flat has an existing 31m² ground floor area with a further 16.8m² first floor area.

3.0 Planning Authority Decision

3.1. Decision

On the 20th day of April, 2022, the Planning Authority issued a notification to **refuse** permission for retention for the proposed development citing the following three refusal reasons:

- "1. The Planning Authority is not satisfied that the subject structure has the benefit of an extant planning permission for its use as a family flat. The proposed development would therefore result in the modification and extension of an unauthorised development, in excess of the maximum floor space limit and occupied by a person who does not meet the criteria as set out in Development Plan Policy. The proposed development therefore materially contravenes section 8.2.3.6 Rural Housing(vi) 'Family Member/Granny' Flat – Rural of the Dún Laoghaire Rathdown County Development Plan 2016 – 2022. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
- 2. Having regard to the elevated and relatively open and exposed position of the site and dwelling, it is considered that the proposed development would not be subservient and sympathetic to the main dwelling and would be visually intrusive and appear unduly prominent on the landscape at this location, thereby seriously injuring the visual amenities of the area, and would set an undesirable precedent for similarly prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*

3. *The proposed development would endanger public safety due to intensification of a substandard existing vehicular entrance onto Burrow Road and the associated traffic hazard and / or obstruction of road users implications, contrary to Section 8.2.4 Sustainable Travel and Transport of the Dun Laoghaire-Rathdown County Development Plan, 2016-2022.”*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning Officer's report is the basis of the Planning Authority's decision, and it includes the following comments:

- There is no evidence that supports the applicants granny flat claims on this site.
- There is no evidence to support the change of use of the garage structure that was present on site in 1992.
- The stated use of the subject structure does not have the benefit of permission and the development sought is not deemed to be acceptable.
- Discrepancies in the floor area between this application and previous application P.A. Ref. No. D20A/0351 are noted.
- The size of the subject structure are not considered to be accurately provided.
- The scale, proportions, and height of the structure subject of this application are not considered to be respectful to its rural context or to the Rural Design Guide.
- Family flats are required to be linked physically to the main dwelling for them to be subsumed by the main house once they are no longer in use.
- The principle of adapting existing buildings may be acceptable in exceptional circumstances. The applicant has no exceptional circumstance.
- There is no evidence to support that the occupant is native to the area.
- The use of the detached outbuilding as a family flat fails to accord with the Development Plan.
- The structure occupies a prominent position in the landscape and is not respectful or subordinate to the main dwelling.

- The structure would be clearly visible from the public road and the wider area.
- This locality is identified as being under strong urban influence.
- Given the lack of tree cover the proposal which is effectively a dwelling would give rise to an unacceptable visual impact.
- No assurance has been given that no issues would arise from this development on the retaining boundary wall.
- Concerns are raised in relation to the lack of adequate sightlines.
- The Drainage Section, Environmental Health Officer and Irish Water requests for further information are noted.
- Third Party concerns are noted.
- Concludes with a recommendation for refusal.

3.2.2. Other Technical Reports

Transportation Planning: Report dated the 11th day of April, 2022, includes the following comments:

- There are two existing vehicle entrances both of which are substandard.
- Any further intensification of either entrance would result in the creation of a traffic hazard on Burrow Road.
- Requested that the applicant demonstrate required 45m visibility splays from a setback of 2.0-2.4m from both entrances. Where a design speed lower than 50kmph relevant professional speed survey in accordance with DMURS required.
- If visibility splays can not be achieved revised entrance design required that meets relevant standards.
- Concludes with a request for further information to deal with their concerns.

Environment Health Officer: Further information requested showing foul drainage that meets the required standards.

Drainage: Report dated the 21st day of March, 2022, raises concerns in relation to surface water drainage and the lack of SuDS measures through to foul drainage

concerns with no clarity that the on-site wastewater treatment would be collected via a separate drainage network.

3.3. Prescribed Bodies

3.3.1. Irish Water: Further information requested.

In this relation to this request, I note that it sets out that the applicant proposes to utilise an existing connection from the public mains; however, it states that: “*a separate supply from the public watermain to the point of supply of the proposed development is required*”. Their response also raises concern that there is no watermain on Burrow Road and that further information should show clearly the public watermain, its route as well as the show the proposed connection.

Further, it sets out that if it is the case that the route crosses lands not in the applicant’s ownership that evidence of Third Party permissions for same or if an onsite water source serves the development that evidence of this potable water supply be submitted with this including bacteriological and chemical examination to demonstrate compliance with European Communities Drinking Water Regulations, 2014.

3.3.2. An Taisce: Raises concern that the planning history of the site does not establish an additional single dwelling at this site but rather an ancillary shed structure. Visual amenity, lack of rural housing need demonstration, traffic hazard through to water supply concerns are also raised.

3.4. Third Party Observations

3.4.1. During the course of the Planning Authority’s determination of this application submissions were received from both observers to this appeal. The key issues raised can be summarised as follows:

- Incorrect information has been provided with this application including that the applicants do not live in the main dwelling but one of their nephews who is purported to have built to the property in 2020 as well as has lived there since that date.
- This property did not contain a granny flat.
- The last application relating to this property referred to what is now being purported to be a granny flat since 1999 as a garage.

- Concern is raised that there is no registration of a proprietary waste water treatment plant on this site.
- There are no water mains on Burrow Road and unconsented connection was made via their property to the public water supply.
- There are existing issues with the waste water tank on site.
- Procedural concerns are raised.
- The landscaping shown relates to trees on their property.
- Substandard access onto the public road.
- The unauthorised works have negatively impacted their amenities.
- Similar types of developments were refused by the council.
- The applicants and their nephew are not local to the area, nor do they have any agricultural and/or other ties with the area.

4.0 Planning History

4.1. Recent Planning History - Site

- **P.A. Ref. No. D20A/0351:** Retention permission was **refused** for the works completed to date to the existing single storey domestic garage building and planning permission for the completion of the conversion of the existing single storey domestic garage to a one bedroom one and a half storey apartment unit ancillary to the main dwelling house and all associated site works for the following stated reason:

"Having regard to the location of the site within an area under 'Strong Urban Influence' as identified in the Core Strategy Map and the 'Sustainable Rural Housing, Guidelines for Planning Authorities' 2005, on lands zoned as 'B' with the stated land use zoning objective 'To protect and improve rural amenity and to provide for the development of agriculture', where housing is restricted to persons demonstrating a genuine rural-generated need in accordance with the current Dún Laoghaire-Rathdown County Development Plan, the Council is not satisfied that the applicant has adequately demonstrated a genuine rural housing need as set out in the Guidelines or the DLR County Development Plan 2016-2022 for a dwelling at this location. The proposed development would contribute to the encroachment of random rural development in

the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. Having regard to the elevated and relatively open and exposed position of the site and dwelling, it is considered that the proposed development would be visually intrusive and appear unduly prominent on the landscape at this location, thereby seriously injuring the visual amenities of the area, and would set an undesirable precedent for similarly prominently located development in the vicinity. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area. The proposed development, would endanger public safety due to intensification of a substandard existing vehicular entrance onto Burrow Road and the associated traffic hazard and / or obstruction of road users implications, contrary to Section 8.2.4 Sustainable Travel and Transport of the Dun Laoghaire-Rathdown County Development Plan, 2016-2022.”

Decision date: 16/05/2020.

5.0 Policy Context

5.1. National Planning Context

5.1.1. 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 particular 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.

In addition, National Policy Objective 20 of the NPF provides that the Core Strategy of County Development Plans will project the need for single housing in the countryside.

Quantifying the need for single housing is to be undertaken on an evidence basis and will relate to the Local Authority's Housing Need Demand Assessment.

- 5.1.2. **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'.
- 5.1.3. **Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.**
- 5.1.4. **Climate Action Plan, 2021.**
- 5.1.5. **National Development Plan, 2021 to 2030.**
- 5.1.6. **Circular PL2/2017.**

5.2. Regional Planning Context

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

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. Local Planning Context

- 5.3.1. **Dun Laoghaire Rathdown County Development Plan, 2022-2028.**

The site is zoned Objective 'B' under the said Development Plan. The stated objective for such land is: "*to protect and improve rural amenity and to provide for the development of agriculture*" and under Map 9 it lies downhill of as well as in close

proximity to Ballyedmonduff Road where views to the east of it are subject to the objective: *“to preserve views”*.

Chapter 2 of the Development Plan sets out the Core Strategy.

Section 2.4.7 of the Development Plan in relation to Rural Settlement Strategy sets out that the: *“Council’s approach to rural settlement embodies the policies and objectives of the ‘Sustainable Rural Housing – Guidelines for Planning Authorities’ (2005) and also takes into consideration the contents of Circular letter PL 2/2017. The Development Plan advocates a robust rural settlement strategy aimed at controlling the spread of urban-generated ‘one-off’ housing into the spatially limited rural countryside of the County”*.

It also sets out that it recognises that: *“there will be certain circumstances where limited one-off housing may be acceptable where it can be shown not to be urban generated, will not place excessive strain on services and infrastructure or have serious negative impact on the landscape, and where demand arises from location-specific employment or local social needs. The policy approach promoted in the Development Plan is considered to provide a reasonable balance between the delivery of appropriate and justifiable residential development in the rural parts of the County with the stated objective of protecting the unique character of the Dublin Mountain foothills”*.

Chapter 12 of the Development Plan deals with Development Management.

Section 12.3.10.6 of the Development Plan deals with ‘Family Member / Granny’ Flat in a rural context.

5.4. Natural Heritage Designations

5.4.1. Not relevant.

5.4.2. The nearest European site is the Wicklow Mountains SAC (Site Code: 002122) which is located just over 4km to the south west of the site at its nearest point.

5.5. EIA Screening

5.5.1. Having regard to the nature of the development for which retention permission is sought, i.e., a granny flat and associated works as well as services, and the likely emissions therefrom there is no real likelihood 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 appeal can be summarised as follows:

- Stepside Lodge has been in the ownership of applicant Donna Struve since 1999 and that the former garage/office has been in use for 23 years as a 'granny flat'.
- Prior to 1999 that the subject structure was used as a 'granny flat'. Thus, it is argued that it was in existence pre the Planning & Development Act, 2000, and is therefore immune from the requirement of planning permission.
- This retention application should restrict its determination to considering the raised walls to accommodate the pitched roof and the modest addition of a first-floor bed space.
- The property is occupied by Donna Struve's parents and her nephew. With the nephew residing in the granny flat and providing care to his elderly grandparents.
- The entrances to Burrow Road are historic, remain in the same ownership and no intensification of use arises from this development.
- The subject structure is almost invisible from Burrow Road.
- Views towards the subject structure are obscured by the existing natural features.
- The additional gable window does not overlook any neighbouring houses or buildings. With the nearest building being 59m away.
- The impact of the works on the subject building and its setting are minimal.
- The entrances onto Burrow Road are historic and predate the Planning and Development Act, 2000.

6.2. Planning Authority Response

6.2.1. The Planning Authority's response can be summarised as follows:

- The Board is referred to their Planning Officer's report.
- The grounds of appeal do not raise any new matter which would justify a change of attitude to the development sought.

6.3. Observations

6.3.1. On the 13th day of June, 2022, an observation was received from An Taisce which can be summarised as follows:

- Section 157(4) of the Planning and Development Act, 2000, does not change the status of a development from 'unauthorised' to 'permitted'. Nor does it confer the benefit of planning permission after the expiry of that period.
- The Appellant does not add any photographic record which showed views of the site from Burrow Road or the wider area.
- The Planning Authority, and the Board on appeal, are entitled to judge public safety by reference to potential use of the development for permission is sought.
- The further information sought by the Drainage, Transportation, and the Environmental Health Officer Departments of the Planning Authority alongside that sought by Irish Water were not taken further because of the principle of the development being considered to be unacceptable.
- The appeal submission is not accompanied by any information to address the items for which further information was recommended.
- A copy of their submission to the Planning Authority is attached.
- The Planning Authority's determination should be upheld.

6.3.2. On the 7th day of June, 2022, an observation was received from Louise Harrison, adjoining property owner, which can be summarised as follows:

- The documents provided do not support that a granny flat has existed since 1999 as claimed on the site of where a new two storey house now stands.

- The observer contends they have lived in the adjoining property for 40 years and they are certain that a Granny Flat never existed on the applicant's land neither before nor after the current owners purchased the property in November of 1997. The small square building referred to has always been a flat roofed shed with a single wooden pedestrian door. It is further contended that as a key holder to the property that this shed building was used for the storage of wet gear, garden equipment, overalls and the like. In 2020 the footprint of this building increased with window and door added to the left-hand side.
- The applicant should submit details of a safe potable water supply.
- There is no watermain on Burrow Road.
- The applicant has tapped into a water supply from Woodside Road that runs through their property and as a result there has been an unacceptable loss of water to their property. They do not have their consent to access the water supply on their lands.
- Reference is made to the lack of detail on the surface water and foul water disposal.
- Reference is made to the Planning Authority's Transportation Division concerns.
- The applicant should be required to demonstrate the required sightlines.
- Housing at this location is restricted to those with a genuine rural housing need.
- There are inconsistencies in the documentation submitted with this application to that previously submitted for previous application P.A. Ref. No. D20A/0351.
- The Board is requested to have regard to their Planning Authority submission.

7.0 **Assessment**

7.1. **Introduction**

- 7.1.1. Having examined all documentation on file, including observation and responses received to the grounds of appeal, having reviewed the planning history, inspected the site as well as its setting, together with having had regard to the relevant local through to national planning policy provisions and guidelines, I consider the key issues in the appeal to be as follows:

- *Planning History and Principle of Development Sought*
- *Traffic*
- *Services*
- *Civil Matters*
- *Visual Amenity Impact*
- *Material Contravention*
- *Residential Amenity Impact*

7.1.2. The matter of ‘*Appropriate Assessment*’ also requires examination.

7.2. Planning History and Principle of Development Sought

- 7.2.1. This application seeks permission for the retention for what is described as a new first floor extension with pitched roof to a building that is described as an existing granny flat together with all associated site works. The submitted application sets out that these works resulted in an additional 16.8m² gross floor area to the subject structure which is a detached structure that sits in close proximity to the south a two-storey detached dwelling known as ‘Stepaside Lodge’ with the curtilage of the said property located on the western side of Burrow Road on an elevated site situated on the foothills of Three Rock Mountain overlooking the lower-lying lands to the north, east and south east with views towards Ballyogan and beyond to the Irish Sea in south County Dublin.
- 7.2.2. At the time of my site inspection, I observed that the subject structure and the associated works to which this application relates were completed with the exception of possibly some exterior painting.
- 7.2.3. Documentation on file appears to suggest that these works were carried out in circa 2020 and there is no evidence to suggest on site that any other substantial works occurred. For example, any upgrading of waste water treatment system and the like.
- 7.2.4. Therefore, as this application seeks retention permission, for clarity I note that the Development Management Guidelines for Planning Authorities, 2007, make it clear that, in dealing with applications for retention, they must be considered “*as with any other application*”. This is in accordance with planning law and with proper planning practice, in that all applications for retention should be assessed on the same basis

as would apply if the development in question were proposed. Therefore, no account can, or should, be taken of the fact that the development has already taken place.

- 7.2.5. From inspection of the site and its setting the only positive that actually arises is the fact that the visual impact of the development on the host dwelling, a semi-detached originally single storey hipped roof cottage and on its setting is clearly evident on site.
- 7.2.6. The visual impact of the development on the host dwelling and the amenity of the area is in my view added to by the fact that the site is located at a highly visible position within elevated position on the foothills of Three Rock Mountain, with this site being visible from the lower ground to the north, north-east, east, and south east. But also, from the higher ground levels including localised views from Ballyedmonduff Road which is situated on higher ground levels in close proximity to the site to the west. With views to the east of this public road subject to the objective: "*to preserve views*".
- 7.2.7. Having regard to recent planning history of the site I note to the Board that in May of 2020 the Planning Authority refused permission under P.A. Ref. No. D20A/0351 for the works described as the retention of the completed to date existing single storey domestic garage building and planning permission for the completion of the conversion of the existing single storey domestic garage to a one bedroom one and a half storey apartment unit ancillary to the main dwelling house together with all associated site works. The Planning Authority's single reason for refusal of retention permission is set out verbatim in Section 4.1 of this report and it was not appealed.
- 7.2.8. In summary the Planning Authority in their given reason for refusal of P.A. Ref. No. D20A/0351 considered that housing is restricted to those demonstrating a genuine rural generated need in areas identified as being under 'Strong Urban Influence'. With this further supported by the site's land use zoning as Objective 'B' under the Development Plan where the land use objective is to protect and improve rural amenity as well as to provide for the development of agriculture. The Planning Authority was not satisfied that a genuine rural generated need was demonstrated for the development sought.
- 7.2.9. In relation to this component of the Planning Authority's reason for refusal, I note that the Development Plan, 2022-2028, has maintained the site's location within an area identified as being under 'Strong Urban Influence' as well as the site's zoning as part of a larger parcel of rural land zoned Objective 'B' with the same land use objective.

However, the aforementioned Development Plan contains more robust provisions for rural development within rural sensitive locations like that of the site. With concerns arising from the potential of this type of development to diminish the visual amenities of the rural landscape through to giving rise to environmental, traffic, climate resilience and other adverse impacts in their rural landscape setting. Thus, the Development Plan sets out that there is general presumption against the principle of such developments except in restricted and limited specified circumstances where certain criteria are satisfactorily demonstrated in a manner that accords with regional through to national planning policy and provisions.

- 7.2.10. Under this application it would appear that one of the applicants Donna Struve parents live in Stepside Lodge and her nephew, the other applicant, i.e., Ben Culligan, resides in the subject structure providing care for her parents, i.e., Patrick and Rita Culligan. With the nephew having purported to have lived in the D18 and D14 areas of Dublin previous to this in recent times.
- 7.2.11. No demonstration of economic need for the granny flat has been provided and it would appear from the information provided with this application and on appeal that the need for the granny flat is based on Donna Struve providing a level of independent living for Ben Culligan. Alongside, him providing a role in the care of Donna Struve's parents who are contended to be his grandparents.
- 7.2.12. A letter from a GP based at Sandyford Medical and Dental Centric Health is provided to support Patrick & Rita Culligan's need for care. This simply that they have complex medical needs with daily supervision necessary over the past few months.
- 7.2.13. I am not satisfied that the documentation provided with this application and on appeal demonstrates a genuine rural housing need in a manner that accords with local through to national planning provisions. With National Policy Objective 19 of the National Planning Framework requiring such demonstration alongside siting and design considerations which as discussed below in relation to water supply, wastewater treatment and access concerns are also not satisfied. With these being fundamental components of site suitability for the development sought.
- 7.2.14. In relation to the other reasons set out under the Planning Authority's reason for refusal for P.A. Ref. No. D20A/0351, it was considered that the subject development would: *"contribute to the encroachment of random rural development in the area and would*

militate against the preservation of the rural environment and the efficient provision of public services and infrastructure”.

- 7.2.15. With further concern raised in relation to visual intrusion within its landscape setting and undesirable precedent for similarly prominently located development within the vicinity.
- 7.2.16. These concerns in my opinion have not been satisfactorily addressed by this current application. With the applicants effectively considering that the existing landscape setting is sufficient to buffer the visual amenity impact of this development and not seriously considering any mitigation in terms of the visual amenity impacts arising from the provision of a separate dormer style structure on an elevated site within this visually prominent rural location.
- 7.2.17. In addition, the reason for refusal for P.A. Ref. No. D20A/0351 also considered that the intensification of the substandard vehicular entrances onto Burrow Road serving the site would give rise to traffic hazard and/or obstruction of road users.
- 7.2.18. As discussed in my assessment below that this is also a matter that this application before the Board for retention has not been overcome.
- 7.2.19. Based on the above considerations, I do not consider that this application has overcome the reasons given by the Planning Authority's to refuse retention permission for the development sought under P.A. Ref. No. D20A/0351.
- 7.2.20. Whilst the subject structure in this application before the Board relates to the same development to which that subject to P.A. Ref. No. D20A/0351. Notwithstanding, the applicants are seeking that the Board accept that the floor area of this structure relates to an existing granny flat of 31m² and the additions of 16.8m². Thus, a gross floor area of 47.8m². Yet, the structure as presented under P.A. Ref. No. D20A/0351 had a given gross floor area of 76m², with this comprised of 38m² at ground floor level and 38m² at first floor level. This relates to what is present on site and not the lesser 47.8m².
- 7.2.21. Of further concern, whilst indicating under P.A. Ref. No. D20A/0351 sought permission for what was described as the completion of the conversion of the existing single storey domestic garage to a one bedroom one and a half storey apartment unit ancillary to the main dwelling house. Yet, the applicant under this application is now seeking to

establish that the subject building has been used as a granny flat for 23 years with no credible evidence to base this contention on and in a manner that conflicts with the most recent planning history of the site.

- 7.2.22. Also, having regard to the other planning history of the site, I note that under P.A. Ref. No. 96B/0492 permission was granted for the retention of a bedroom extension at first floor level of Stepside Lodge, with this appearing to give rise to 5 two bed space bedrooms. The documentation accompanying this application do not show the subject outbuilding as a granny flat but as a garage. This is similarly the case under P.A. Ref. No. 92B/0834 which I further note shows at this point in time Stepside Lodge to contain 4 two bed space bedrooms. In addition, the footprint of the garage structure is much smaller than the footprint of the dormer subject structure on site.
- 7.2.23. Having inspected the site I note that there is a shed structure to the immediate rear of the building subject of this application. Its footprint appears to correspond with the historic site layout plan showing structures on this site accompanying planning applications.
- 7.2.24. Moreover, its single storey appearance, building envelope through to the type of opening provided to gain access to its interior space appears to correspond with that historically described on the site.
- 7.2.25. I therefore do not consider that there is any credible evidence that supports the applicant's contention of a granny flat at this site or in terms of the subject structure since the applicant purchased the site in 1999, before the applicant purchased the site or up to recent times.
- 7.2.26. I am also not satisfied based on the information available that the structure that is present correlates with this historic garage on this site.
- 7.2.27. These concerns add to the questions over the modest scope of development sought under this application. Despite evidence of the contrary as supported by planning history and historical evidence available on this site including satellite imagery and maps. If one accepts that this development is restricted to that stated in the planning application I am of the view that if permitted it would add to unauthorised works and use at this site in a manner that is contrary to proper planning and sustainable development.

- 7.2.28. Having regard to the principle of a granny flat at this rural location, of note Section 12.3.10.6 of the Development Plan defines these as: *“family flat is a temporary self-contained living unit with one or (maximum) two bedrooms for a member of the immediate family to reside in”*.
- 7.2.29. This section of the Development Plan also recognises that: *“family flats can provide a short-to-medium term solution to housing needs within the rural area, particularly in cases where an applicant cannot satisfy rural housing policy or where a native is required to return to live in the rural area in order to care for family members”* and that: *“in general, a family flat would consist of extending/ adapting an existing family dwelling to accommodate their needs. In such cases, a direct link (in the form of an internal door) to the main dwelling house would be maintained and the unit, when no longer in use as a family flat, would be subsumed back into the fabric of the main dwelling. In exceptional circumstances, the Planning Authority may accept the principle of renovating/restoring and changing the use of all/ part of an existing outbuilding or structure within the curtilage of a family dwelling for use as a ‘family flat’. Any such proposal would be strictly controlled and would be assessed on a case-by-case basis”*.
- 7.2.30. The site on which the subject structure sits on is a heavily sloping, elevated and containing significant hard stand areas rural site. With this application providing a lack of supporting evidence on waste water treatment, surface water drainage and water supply.
- 7.2.31. Stepside Lodge as indicated in planning history files is a 5 two bed space dwelling purported to be occupied by two persons.
- 7.2.32. Of concern there is no justification provided as to why a dwelling of this size could not have been adapted to provide sufficient space for any family member to reside in whilst providing the contended necessary care required for its two sole occupants.
- 7.2.33. This is irrespective of the fact that a nephew does not appear to be considered as immediate family member in the context of local planning provisions or otherwise.
- 7.2.34. Through to what exceptional circumstance was there for an additional family flat to be provided independent of the main dwelling on site. Nor does the applicants propose any link between the family flat and the main dwelling as part of this application.

- 7.2.35. In the documentation provided with this application and on appeal I can find no exception circumstance set out by the applicants to support the provision of an independent additional family flat on this unserviced rural site.
- 7.2.36. Section 12.3.10.6 of the Development Plan also sets out that all such developments will be subject to a legally binding agreement under the provisions of Section 47 of the Planning & Development Act, 2000, as amended, and that they would be subject to demonstrating compliance with a number of criteria.
- 7.2.37. The criteria includes that the flat must not exceed 50 sq.m. in floorspace and/or comply with rural extensions which I note are set out under 12.3.7.3 of the Development Plan.
- 7.2.38. In relation to compliance with this particular criterion based on credible evidence the floorspace of this development significantly exceeds the maximum floorspace by 26m² and Section 12.3.7.3 of the Development Plan is not applicable as this application does not relate to an extension to an existing dwelling.
- 7.2.39. The criteria also includes that the site must be suitable for development.
- 7.2.40. In relation to this criterion and as discussed in further sections of this report below I am not satisfied that the site is suitable for such a development in terms of servicing of this unit and in relation to the additional, albeit modest, intensification of use of either existing entrance serving Stepside Lodge due to the substandard design of these entrances and the lack of demonstratable sightlines in either direction from both entrances serving the site onto Burrow Road.
- 7.2.41. The criteria also includes that the flat must be occupied by an immediate family member and a legal agreement under the provisions of Section 47 of the Act may be sought by the Planning Authority. The applicant Ben Culligan is contended to be a nephew of the Donna Struve owner of the subject property whose parents are contended to occupy this dwelling. The immediate family link is not demonstrated by any evidence nor does the local to national guidance on the matter of immediate family member appear to include a nephew. With the planning guidance appearing to define immediate family as parents and their children.
- 7.2.42. In addition, this criterion also sets out that when no longer in use as a family flat, the unit must be subsumed back into the fabric of the main dwelling house.

- 7.2.43. As said previously there is no evidence provided with this application or on appeal that indicates that the applicants are willing to either return its use to an ancillary outbuilding when no longer needed or that it would be link it to Stepside Lodge as the host dwelling and subsumed into it when no longer needed. As said Stepside Lodge is an already sizeable dwelling in floor area and it is located in a sensitive to change location where the land is unserviced alongside there is a presumption against such developments except in limited circumstances.
- 7.2.44. There is also no documentation on file that would support that the applicants are willing to comply with this criterion by way of any limitation to the legal title of Stepside so as to provide assurance that the property remained one dwelling unit.
- 7.2.45. The criteria also includes that the flat must be capable of being connected to the existing wastewater treatment system on the site. Where such a system is not sufficiently sized or operating efficiently it must be capable of being replaced with a suitable wastewater treatment system to serve both the existing house.
- 7.2.46. The documentation on file shows the location of the existing septic tank and soakaway but does show that for the proposed Tricel STP En & SR66 Certified BOD 95.9 Sewage Treatment Plan with the proposed 5 by 10 subsurface percolation trenches in a manner that would also be in compliance with the current EPA Code of Practice.
- 7.2.47. Nor does the documentation show what connections have been made to serve the flat that is already *in situ* and occupied.
- 7.2.48. Further it does not show that it is of a size that is suitable for the quantum of development on site. Nor is it demonstrated that there are design measures in place to the required standard that deal with the additional surface water arising from the development sought under this application.
- 7.2.49. In addition, this criterion also requires that the existing access and parking on site must be capable of serving the additional parking and vehicular movements generated by the flat.
- 7.2.50. Whilst I acknowledge that there is sufficient on-site parking to meet the needs of occupants of the flat and the host dwelling the applicants propose no improvements to either of the substandard entrances serving the site. They do not accept that

interventions are required to provide safe access onto the public road arising from the intensification of use.

- 7.2.51. Based on the above considerations I consider that the development for which permission is sought does not correspond to the development that has occurred on site and if permitted would intensify as well as further consolidate the unauthorised development and land use that has occurred on this site. Further, having regard to the principle of the development, the planning history of the site through to the provisions set out under the Development Plan for family flats / granny flats the development sought under this application would give rise to a type of development that would fail to accord with the proper planning and sustainable development of the area. In particular having regard to its failure to demonstrate compliance with Section 12.3.10.6 of the Development Plan. These are in my view sufficient grounds that support the refusal of retention permission for the development sought under this application in a rural location with high visual sensitivity to change that has been diminished from *ad hoc* one-off rural dwellings that have cumulatively eroded its rural character and the visual qualities of this rural landscape setting.

7.3. Traffic

- 7.3.1. This site is served by two existing entrances that open onto the western side of Burrow Road at a point where this road has a changing horizontal and vertical alignment and where sightlines in both directions from these entrances is extremely limited. The road is also of modest width with limited and steep grass verges, it contains a continuous white line, the road is marked with the word slow through to the posted speed limit is the maximum applicable on local rural roads.
- 7.3.2. During the time of my site inspection, I observed that there was a steady flow of traffic along this road as well as people walking and on bicycles.
- 7.3.3. Of concern the applicants propose no improvements to the existing substandard entrances with this application and on appeal failing to recognise that albeit the traffic generated by a family flat would be small. Nonetheless it would still give rise to an intensification of use of the entrances serving the site.
- 7.3.4. Further, the applicant also provides no assurance in terms of the matter of whether the site could be subject of future subdivision should a fully independent dwelling unit be permitted. Given that the proposed site area is 0.33ha and given that the flat is an

independent structure with land to the immediate east and south of it. Alongside this containing a separate vehicle entrance.

- 7.3.5. As discussed in the previous section of this report the applicant is required to demonstrate that safe access can be provided for the intensification of traffic that would arise from the family flat under Section 12.3.10.6 of the Development Plan. Such a requirement in my view is reasonable and reflects design requirements set out for residential development in rural locations like this as provided for under the National Planning Framework and the Sustainable Rural Housing Guidelines.
- 7.3.6. I note that the Planning Authority's Transportation Report sets out that a detailed site survey which would demonstrate that the Burrow Road has effectively a design speed of 50kmph should be sought by way of further information. In such circumstances they considered that a lesser visibility splay from a setback of 2.0-2.4m from either existing vehicular entrance may be deemed acceptable. As part of the appeal submission this has not been demonstrated and I note that during my inspection I observed that vehicles journeying along the adjoining stretch despite its substandard nature were doing so at speed exceeding 50kmph. It was not a road that had a low speed environment from walking along it in proximity of the site.
- 7.3.7. Neither entrance serving Stepside Lodge is of a safe standard to provide safe access onto the public road.
- 7.3.8. Further, the applicants do not appear to be amenable to making any modifications including removing visual obstacles on either side of entrance to secure safer access onto Burrow Road nor provide a revised boundary treatment that provides one improved entrance onto Burrow Road with the required sightlines to serve this development.
- 7.3.9. I am not satisfied that the development sought under this application can be served by a safe access onto the public road of Burrow Road. I consider that it would give rise to an intensification of traffic movements that would arise from the development would not give rise to additional road safety and traffic hazards to road users by way of additional potential for obstruction arising from vehicles accessing as well as egressing from either the northern or southern entrance serving the site. This concern in my view is reason to support refusal of permission for the development sought under this application and I further consider that this development would give rise to an

additional dwelling unit that would be car dependent as such not only adding to the cumulative volumes of traffic on the substandard local roads within its immediate vicinity but also being a type of development that is contrary to climate resilience planning provisions and guidance provided for under local, regional through to national planning policy provisions and guidance.

7.4. Services

- 7.4.1. The information provided with this application and on appeal, in my opinion, do not satisfactorily demonstrate a safe and sustainable potable water supply or that the waste water treatment system in place or proposed is to the required standard to meet the quantum of development on site.
- 7.4.2. Including it provides for no additional surface water drainage on an elevated site where there is significant areas of non-porous hard stand and that the additional development on site is not prejudicial to public health or that no additional surface water run-off arises beyond the perimeters of the site. In particular Burrow Road which occupies significantly lower ground levels.
- 7.4.3. In addition, the information provided lacks clarity to make an informed assessment of such matters and I also note that Irish Water raise concerns in relation to the proposed development that would require clarification by way of further information.
- 7.4.4. The appellant in my view did not address satisfactorily address these matters in their appeal submission to the Board.
- 7.4.5. Further, in relation to Section 12.3.10.9 of the Development Plan this requires this type of development to demonstrate that the design of waste water treatment systems and percolation areas shall conform with the Environmental Protection Agency's 'Code of Practice', the most recent of which was adopted in 2021.
- 7.4.6. I am not satisfied on the basis of the information provided that the development sought under this application would not be prejudicial to public health or that it would not give rise to any other environmental concern and/or nuisance arising from what is essentially a residential population equivalent of 12.
- 7.4.7. Moreover, I am not satisfied based on the information provided with this application and on appeal that critical infrastructure like a safe, secure, and sustainable water supply is *in situ* to meet the additional demands of the quantum of residential

development on site at present and into the future should this development be permitted.

7.5. Civil Matters

- 7.5.1. In tandem with the concerns raised under Section 7.4.1 of my assessment below it would appear that it is likely that certain services upon which this development is dependent, i.e., connection to a potable water supply, are dependent upon access through Third Party land and Third-Party infrastructure in order to connection to public mains water. It would appear that the appellant does not have consent from any Third Party for such connections and it would also appear that the use of Third-Party water supply is providing issues for those with legal interest in this supply for serving their property which appears to include an agricultural landholding alongside dwelling.
- 7.5.2. There also appears to be no public mains water supply on Burrow Road. Yet this is what is contended by the appellant in terms of setting out how this development is serviced and would be serviced into the future.
- 7.5.3. As part of the documentation to be provided for consideration of family flat / granny flat, in my view, there is an onus on the applicant to demonstrate that adequate services can be provided.
- 7.5.4. It is accepted that access to a safe, secure and sustainable potable water supply is a critical component for any residential occupation.
- 7.5.5. The lack of demonstrating that this in place to serve the quantum of development on this site, in my view, further highlights the insufficient information provided with this application through to the lack of adequate clarity to assess the development sought.
- 7.5.6. Further, Section 12.3.10.10 of the Development Plan deals sets out that: "*where no public water main is available, a potable water supply must be provided in accordance with Council requirements. Tests of the proposed drinking water should be carried out accordance with the requirements of the Environmental Health Office and results should be submitted with the Planning Application.*" This information has not been provided and I note that Irish Water as well as the Planning Authority's Environmental Health Officer both raise concerns in relation to this matter.
- 7.5.7. In addition, I am also cognisant that any said dispute in terms of consents from Third Parties, way leave agreements and the like are matters to be resolved between the

relevant parties, having regard to the provisions of Section 34 (13) of the Planning and Development Act, 2000, as amended, where it states that a person is not entitled solely by reason of a permission to carry out any development. Therefore, should permission be granted and should the appellant or any other party consider that the permission granted by the Board cannot be implemented because of this issue, then Section 34 (13) of the said Act is a relevant consideration. Thus, any such grant of permission for the development sought under this application should include Section 34(13) of the Act as an advisory note.

7.6. Visual Amenity Impact

- 7.6.1. In addition, to the concerns already raised in relation to the visual amenity impact of the development sought under this application I consider that there is merit to the concerns raised that visual buffering and screening of this development is largely dependent on natural features that are present in the adjoining sites to the east and west as opposed to those provided within this highly elevated site which is highly visible due to its setting on the foothill of Three Rock Mountain.
- 7.6.2. The design as put forward provides no evidence was had to the high visibility of the site within its landscape setting in terms of the built form, height, mass, positioning through to architectural response chosen to lessen the visual impact that would arise from another *ad hoc* built form.
- 7.6.3. Particularly considering the cumulative impact *ad hoc* structures and the proliferation of one-off dwellings has had on this visually sensitive landscape setting.
- 7.6.4. The visual amenity impact concerns arising from this development adds in my view to the concerns already raised in this assessment relation to the failure to satisfactorily demonstrate compliance with Section 12.3.10.6 of the Development Plan.
- 7.6.5. Based on the above considerations, I therefore consider the second given reason of the Planning Authority to refuse retention permission for the development sought under this application on visual amenity grounds is with basis.

7.7. Material Contravention

- 7.7.1. Having regard to the provisions set out under Section 37(2)(b) of the Planning and Development Act, 2000, I note that the Planning Authority in their first given reason for

refusal decided to refuse permission on the grounds that the development materially contravenes the Development Plans provisions for granny flats.

7.7.2. I note that the Planning Authority in making their determination on this application considered it under the previous County Development Plan which was recently superseded.

7.7.3. Notwithstanding, similar but more robust criteria are in place for the type of development sought, i.e., including but not limited to Section 12.3.10.6 of the Development Plan, within this sensitive to change landscape.

7.7.4. In this circumstance, the Board may only grant permission where it considers one or more of four specified criteria are met.

7.7.5. In this regard I submit to the Board that the development for which permission is sought is not a type of development that could be:

- 1) Reasonably be considered in itself to be of strategic and/or national importance;
- 2) Having regard to local planning provisions that the objectives set out in the Development Plan these are clearly stated and that they are not conflicting;
- 3) There is also no imperative in the regional planning guidelines for the area through to Government policy which would support the development that this sought under this application but rather these regional through to national planning provisions and guidance have a presumption against such developments and only permit them in circumstances where design and other considerations are demonstrated, in particular demonstratable economic and social need through to demonstrating site specific design considerations including servicing; and,
- 4) That the pattern of development and permissions granted in the area since the making of the plan has not altered.

7.7.6. Based on the above considerations it is my considered opinion, therefore, that the Board is precluded from a grant of permission in this instance.

7.8. Residential Amenity Impact

7.8.1. Having regard to the location of the subject structure within the site, the lateral separation distance between it and the nearest residential properties in its vicinity, the orientation and placement of the glazing on this structure, I do not consider that the

proposal would have any material significant adverse visual, overbearing, overshadowing, and/ or overlooking impacts.

7.9. Appropriate Assessment

- 7.9.1. Having regard to the nature and scale of the development sought under this application, the likely emissions therefrom, nature of the receiving environment and proximity to the nearest European site, I am satisfied that no appropriate assessment issues arise, and it is not considered that the development sought under this application would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. The Board is not satisfied that the subject structure has the benefit of an extant planning permission for its use as a family flat. The development sought under this application would therefore result in the modification and extension of an unauthorised structure as well as an unauthorised use, in excess of the maximum floor space limit, in non-compliance with the design requirements for such a development and occupied by a person who does not meet the criteria as set out in Development Plan Policy. The development sought under this application would therefore materially contravenes Section 12.3.10.6 Dún Laoghaire Rathdown County Development Plan, 2022-2028.

In addition, the site is located within an Area Under Strong Urban Influence as identified in the said Development Plan Core Strategy and 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 an area where housing is restricted to persons demonstrating genuine local need in a manner consistent with 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 nor is there any exceptional economic or social need for them to have a detached granny flat of a size that significantly exceeds Section 12.3.10.6 of the Development Plan at this site as well as fails to demonstrate compliance with the criteria set out under this section of the Development Plan.

It is therefore considered that this 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 random residential developments that would be more sustainably be provided for within nearby settlements.

In addition, having regard to the topography of the site, its position and visibility in the rural landscape setting, it is considered that the proposed development would result in a prominent and obtrusive feature in the landscape that would seriously injure the visual amenities of the area by way of adding to the cumulative impact of the proliferation of dwelling units and in a landscape that has limited capacity to successfully absorb further such developments.

The development sought under this application would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. It is considered that the development sought under this application would endanger public safety by reason of a traffic hazard because of the additional traffic movements it would generate on a substandard local road at a point where both entrances serving the site have restricted sightlines in both directions.

Patricia Marie Young
Planning Inspector – 30th November, 2022.