



An
Bord
Pleanála

Inspector's Report

ABP-313633-22

Development

Retention permission is sought for an existing dwelling bungalow, well, effluent system and associated site works. The proposed retention permission will remove the requirement to demolish this dwelling as provided under the development description for P.A. Ref. No. D10A/0025.

Location

The site consists of a c0.31ha plot of land at Pale Farm, Puck's Castle Lane, Ballycorus, Rathmichael, Co. Dublin.

Planning Authority

Dun Laoghaire Rathdown County Council.

Planning Authority Reg. Ref.

D21A/1075.

Applicant(s)

Sam Stuart.

Type of Application

Retention Permission.

Planning Authority Decision

Refuse.

Type of Appeal

First Party.

Appellant(s)

Sam Stuart.

Observer(s)

None.

Date of Site Inspection

4th day of November, 2022, and the
18th day of November, 2022.

Inspector

Patricia-Marie Young.

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1.0 Site Location and Description

- 1.1. Having inspected the appeal site I consider that the Site Description provided by the previous Board Inspector for a previous appeal case ABP-302259-18 (P.A. Ref. No. D18A/0477) on this site is still applicable. It reads:

“The application site is located along a private access road serving the applicants farm, Pale Farm, off Pucks Castle Lane in Ballycorus, Rathmichael a predominantly rural area in County Dublin, c. 1.3km west of the M50 on an outlying hill of the Dublin Mountains. Further north Puck Castle Lane accesses onto the Ballycorus Road (R116) which links the M50 to Kilternan.

The relevant house is a single storey bungalow granted permission in 2004 c.180m from the entrance into the Farm off Pucks Castle Lane. The house is located on the southern side of the lane, on a site carved out of a slope and elevated above the lane with an area of planting that has yet to mature, separating the house from the lane. Adjacent to the house is a single storey L-shaped structure which at present appears to be used by the applicant’s dogs and for storage.

The private lane also serves to access the farm, farm buildings and a two storey farm house granted permission to the applicants in 2010”.

- 1.2. This this I note that at the time of my inspection the subject dwelling was occupied.
- 1.3. This elevated site looks out over an undulating landscape and the dwelling thereon has panoramic views of the surrounding landscape and the Irish Sea beyond. The surrounding land is in agricultural use with the subject dwelling being connected to the larger Pale Farm complex which contains another dwelling house, farm buildings and fields in grassland.
- 1.4. Photographs taken during inspection of the site are attached.

2.0 Proposed Development

- 2.1. Permission is sought for a development consisting of the **retention** of the existing dwelling bungalow, well, effluent system and associated site works. The proposed retention permission seeks to remove the requirement to demolish this dwelling as provided under the grant of permission P.A. Ref. No. D10A/0025.

2.2. On the 1st day of April, 2022, the applicant submitted their **further information response** to the Planning Authority. This consisted of the following documentation:

- Herd Number.
- Employment Declaration.
- Letter from the Applicants Medical Practitioner.
- Letter from the Applicants Father.
- Right of Way details.
- Proof of Address.
- Updated Letter from Teagasc.
- Updated Solicitors Letter.

This information was not deemed to be significant and therefore no new public notices were required.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On the 27th day of April, 2022, the Planning Authority **refused** retention permission for the following stated reasons:

- “1. *The site of the development to be retained is located within an area zoned ‘G’ with the zoning objective ‘to protect and improve high amenity areas’ and in an area where housing is restricted to persons demonstrating a genuine requirement for housing in accordance with policy objective PHP23 of the Dún Laoghaire-Rathdown County Development Plan 2022-2028. Having regard to the documentation submitted with the planning application, the Planning Authority is not satisfied that the Applicant has adequately demonstrated a genuine local need to reside in this rural area. It is considered, therefore, that the Applicant does not comply with the housing need criteria as set out in Section 4.3.1.6 policy objective PHP23 and Section 12.3.10 One-Off Housing in the Countryside of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 and the development would contravene materially the requirements*

for rural housing in high amenity zoned lands under 'G' zoning objective of the County Development Plan 2022-2028 and would be contrary to the proper planning and sustainable development of the area.

2. *To permit the retention of the subject house would contravene materially Condition 1 of planning permission reference number D10A/0025."*

3.2. Planning Authority Reports

3.2.1. Planning Reports

The **final Planning Officer's report** is the basis of the Planning Authority's decision. It includes the following comments:

- Based on the information provided the Planning Authority were not satisfied that the development accorded with Section 4.3.1.6. Policy Objective PHP23 and Section 12.3.10 of the Development Plan. Permission should be refused on that basis.
- It is the applicant's intention to maintain the existing waste water treatment system.
- There is a right-of-way in place for the subject dwelling to the public road.
- No AA or EIA issues arise.
- The land use zoning at this location restricts housing to persons demonstrating a genuine requirement for housing. The applicant has not demonstrated this.
- Concludes with a recommendation of refusal.

The **initial Planning Officer's report** concluded with a request for further information on the following matters:

- | | |
|-------------|--|
| Item No. 1: | Compliance with Policy RES16 and Section 8.2.3.6 of the Development Plan as well as Circular Letter SP5/08 was sought. |
| Item No. 2: | Clarification sought on whether the subject dwelling was the applicants principal dwelling. |
| Item No. 3: | An up-to-date letter from Teagasc in support of the applicant's role in the land holding is sought. |
| Item No. 4: | Advises that the solicitor's letter is undated. |
| Item No. 5: | Clarification on whether a new effluent system is proposed. |

Item No. 6: Revised plans showing the extent of the red line boundary to the public road sought.

3.2.2. Other Technical Reports

Transportation: No objection.

Drainage: Recommends that all drainage related conditions and obligations of P.A. Ref. No. D04A/0039 shall apply.

Environmental Health Officer: No objection, subject to safeguards including ensuring that the waste water treatment systems is to the required standard.

3.3. Prescribed Bodies

3.3.1. None.

3.4. Third Party Observations

3.4.1. None.

4.0 Planning History

4.1. Site

- **ABP-302259-18 (P.A. Ref. No. D18A/0477):** On the 5th day of December, the Board under a First Party Appeal made by the appellants parents, **refused** retention permission for the retention of an existing bungalow, for the following stated reasons and considerations:

“The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out 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 a genuine requirement for housing in accordance with policy RES16 and land use objective ‘G’ (High Amenity Zone) of the Dun Laoghaire Rathdown County Development Plan 2016-2022. Furthermore, the subject site is located in a rural area that is under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, 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 proximity of existing settlements to the subject site and having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicants have a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicants do not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, notwithstanding the provisions of the current Dun Laoghaire Rathdown Development Plan, and would, be contrary to the proper planning and sustainable development of the area.”

Of note, the appellants in this case were the applicants' parents. In addition, it would appear from the planning history that this particular planning application arose from Planning Enforcement Reference ENF 79/18 which related to the matter of non-demolition of a house as required under Condition No. 1 of P.A. Ref. No. D10A/0025.

- **P.A. Ref. No. D10A/0025:** This relates to a **grant** of permission in 2010 for a two-storey farmhouse, wastewater treatment system and demolition of habitable house. Of relevance to this appeal case are the requirements of Condition No.s 1, 3 and 12. In this regard, Condition No. 1 requires the development to be carried out as per submitted plans and particulars; Condition No. 3 requires the applicant to enter into a legal agreement with the Planning Authority under Section 47 of the Planning and Development Acts, 2000, as amended, to restrict the lands outlined in red on the site location map (Dwg. No. 124.01.01) lodged with the Planning Authority on the 21st January, 2010, from further residential development and as agreed by the Applicant, in the Additional Information received on the 14th June, 2010, prior to the commencement of the permitted development. It also sets out that the agreement is to be registered and proof of registration is to be submitted to the Planning Authority; and, Condition No. 12 required the existing materials from the demolished structures shall be re-used and recycled to the satisfaction of the Planning Authority.

- **ABP Ref. No. 06D.231879 (P.A. Ref. No. D08A/1022):** This appeal case relates to a 2009 decision to **refuse** permission for changes to the form and layout of the house granted under D04A/0039. To change it from a c133m² bungalow to a c483m² house with basement level garage and associated farmyard and outbuilding. This appeal case was refused on the grounds of excessive size and prominent location.

- **P.A. Ref. No. D04A/0039:** This relates to a **grant** of planning permission for a replacement of an old cottage on this site. It would appear from available planning history that the appellants parents purchased the c.75-acre landholding in 2004.

4.2. **Other**

- 4.2.1. **Enforcement:** The site is subject to several Enforcement Notices in relation non-compliance with the conditions attached to the grant of permission P.A. Ref. No. D10A/0025. These are detailed in the Planning Authority's Planning Officer's reports attached to file.

5.0 **Planning Context**

5.1. **National Planning Context**

- **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.

- **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'.

- **Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021.**
- **Climate Action Plan, 2021.**
- **National Development Plan, 2021 to 2030.**
- **Circular PL2/2017.**
- **Circular SP 05/08.**

5.2. Regional Planning Context

5.2.1. Spatial Economic Strategy – Eastern & Midland Region, 2019-2031, (RSES).

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. Dún Laoghaire Rathdown County Development Plan, 2022-2028.

The site is zoned Objective 'G' (High Amenity Zone) under the said Development Plan. The stated objective for such land is: "*to protect and improve high amenity areas*".

According to Map 10 – Laughanstown/Shankill and Map 14 Rathmichael/Old Connaught of the Development Plan the subject site is situated on land subject to SLO 92, i.e., "*that no insensitive or large-scale development will take place above the 90 - metre contour line at Rathmichael, from Old Connaught Golf Course to Pucks Castle Lane*".

Section 4.3.1.6 and Objective PHP23 of the Development Plan Policy is relevant. The said objective sets out on the matter of management of one-off housing that it is a Policy Objective of the Planning Authority: *“to restrict the spread of one-off housing into the rural countryside and to accommodate local growth into identified small villages subject to the availability of necessary services. One-off housing will only be acceptable where it is clearly shown that it is not urban-generated, will not place excessive strain on services and infrastructure, or have a serious negative impact on the landscape and where there is a genuine local need to reside in a rural area due to locationally-specific employment or local social needs”*. With this being subject to the compliance with the specific zoning objectives as well as consistent with NPO 19 of the NPF and RPO 4.80 of the RSES.

It also states that: *“in order to protect the rural character of the countryside and foster sustainable development it is necessary to restrict the growth of urban-generated ‘one-off’ housing and only facilitate genuine and bona fide cases for new residential development within the County’s rural areas”* and that development proposals will be evaluated in accordance with the provisions of the ‘Sustainable Rural Housing Guidelines for Planning Authorities’, 2005 (and any amendment thereof) as well as Circulars SP 05/08 and PL 2/2017.

Chapter 4 of the Development Plan on the matter of High Amenity Zone Objective ‘G’ states that: *“dwellings will only be permitted on suitable sites where the applicant can demonstrate to the satisfaction of the Planning Authority that:*

- *There is genuine requirement for housing in the area because their principal employment is in agriculture, hill farming or a local enterprise directly related to the area’s amenity potential.*
- *The proposed development will have no potential negative impacts for the area in such terms as visual prominence or impacts on views and prospects, or the natural or built heritage”*.

Section 12.3.10 of the Development Plan deals with the matter of ‘One-Off Housing’ in the Countryside and it states that the Council will: *“generally seeks to protect the rural and open character of the countryside and foster sustainable development. In pursuance of these objectives the Council’s position in relation to ‘one-off’ houses is essentially restrictive and precautionary”*.

Section 12.3.10.4 of the Development Plan deals with the matter of replacement dwelling.

Section 12.3.10.9 of the Development Plan deals with the matter of Waste Water Treatment Systems Site assessment and the design of waste water treatment systems and percolation areas. It states that these shall: “*generally conform with the Environmental Protection Agency’s ‘Code of Practice: Wastewater treatment and Disposal Systems Serving Single Houses’ (2009) and the requirements of the Environmental Health Office*”.

Section 12.3.10.10 of the Development Plan on the matter of Water Supply states that: where: “*no public water main is available, a potable water supply must be provided in accordance with Council requirements*”.

5.4. Natural Heritage Designations

- 5.4.1. The nearest Natura 2000s site are Ballyman Glen SAC (Site Code: 000713) and Knocksink Wood SAC (Site Code: 000725). These are located c2.6km to the south and c3.5km to the south west, respectively as the bird would fly.

5.5. EIA Screening

- 5.5.1. Having regard to the nature of the development for which retention permission is sought, the likely emissions therefrom, the separation distance and lack of any hydrological or otherwise connection within the zone of influence, 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.

5.6. Built Heritage

- 5.6.1. The site is situated in close proximity to the following Recorded Monuments:
- DU05065 - Classification ‘WELL’; DU02308 - Classification ‘BAWN’; DU05064 - Classification - ‘BUIL’ and DU02307 - Classification ‘UNCA’ are located c0.2km to the east of the site.
 - DU02924 - Classification ‘FUFU’ is located c0.2km to the north of the site.
 - DU02304 - Classification ‘RIFO’ is located c0.3km to the south east of the site.

- DU02305 - Classification 'HILL' and DU02306 are located c0.4km to the south east of the site.
- DU02305 - Classification 'HILL' and DU02303 – Classification 'RIFO' are located c0.4km to the south of the site.

6.0 The Appeal

6.1. Grounds of Appeal

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

- The subject dwelling provides for their rural housing need.
- They play a vital role in the running of the farm.
- The Council are as a result of their decision seeking the demolition of a perfectly habitable dwelling in the context where there is a national crisis in residential housing supply and where there is a shortage of housing in the Greater Dublin area. This is not sustainable.
- This development is consistent with local planning provisions.
- The applicant's family will live in the dwelling house granted under P.A. Ref. No. D10A/0025 whereas they will live independently in the subject dwelling.
- There is no statutory reason why a previous permission cannot be amended to remove the requirement for demolition of this dwelling.
- The site is accessed from a private road that is used to access the farm lands and other dwellings within the overall site.
- The dwelling sits on a standalone parcel of land that is surrounded by existing agricultural land and is largely screened from public view by landscaping.
- The subject dwelling was never demolished due to the applicant's family's needs.
- All structures on site are existing and no new development works are proposed.
- The applicant lives in the subject dwelling.

- The development sought under P.A. Ref. No. D10A/0025 included the demolition of the subject dwelling in this appeal case. Its demolition was considered to be visually appropriate, and the new dwelling house was considered less visually intrusive.
- Under ABP-302259-18 (P.A. Ref. No. D18A/0477) Malcolm and Susan Stuart were refused permission for the retention of the subject dwelling.
- The applicant owns one-third of the family farm and his principal employment is in the family farm.
- The applicant's father has health issues which further emphasises the need for him to live and work on the farm.
- The applicant intends on being the long-term dweller of the subject dwelling.
- The Transportation Planning, Drainage Planning and Environmental Health Officer raised no objection to this proposal.
- Their intention is to take over the family farm when his father is unable to farm it.
- The family's circumstances have changed since the grant of permission P.A. Ref. No. D10A/0025.
- It is a policy objective of the Development Plan to retrofit and reuse existing buildings rather than their demolition and reconstruction where possible.
- The applicant seeks that the Board overturn the Planning Authority's decision.

6.2. Planning Authority Response

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

- Board is referred to their Planning Officer's report.
- No new issues that would justify a change of attitude to this development.

6.3. Observations

6.3.1. None.

7.0 Assessment

- 7.1. Having examined all documentation on file, inspected the site and 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 relate to the Planning Authority's two reasons for refusal which I have set out verbatim under Section 3.1.1 of this report above.
- 7.2. Notwithstanding, I also consider that the planning history of the site together with the principle of the development sought given the extensive planning history of the site requires detailed examination against relevant planning provisions local through to national for what is essentially a one-off dwelling in a highly sensitive rural landscape setting recognised in local through to national development plans as one that is under strong urban influence.
- 7.3. This sensitivity is added to by the fact that the site is located on land that is zoned of high amenity value on the foothills of the Dublin Mountains with the site having panoramic views over the lower ground levels which includes views into the city suburbs of Dublin and the Irish Sea coastline.
- 7.4. Moreover, the site is dependent upon access to the public road network on a private lane of modest width and poorly surfaced. With this private lane opening onto Pucks Castle Lane, which is also of substandard width, alignment, surface, at a point where sightlines are restricted in both directions alongside is a public road that local planning provisions seek to secure its retention as a '*Recreation Access Route*' under the Development Plan. This is indicated in Map No. 13 and 14 of the Development Plan.
- 7.5. The sensitivity of the site is further added to by the sites location in a setting where there is rich built and archaeological heritage. With many of such sites afforded National Protection with their visual setting consisting of a highly exposed landscape lower mountainside setting whose visual amenities it is an objective of the Development Plan to protect under Specific Local Objective 92.
- 7.6. This objective sets out that no development will take place above the 90-metre contour at Rathmichael, from Old Connaught Golf Course to Pucks Castle Lane that no insensitive development will take place above the 90-metre contour line at Rathmichael, from Old Connaught Golf Course to Pucks Castle Lane. This is of

relevance to the development sought given that the subject bungalow for which retention is sought is positioned above the 90-meter contour line and as said is positioned in a highly visible and exposed rural high amenity zoned land.

7.7. The Planning Authority permitted the bungalow subject of this appeal case before the Board for retention in 2004 under P.A. Ref. No. D04A/0039. This parent permission essentially sought permission for a replacement dwelling for a cottage on what is the appellants parents' agricultural landholding. This was permitted subject to conditions and the planning history indicates that this grant of permission was not implemented until after c2009 on foot of the refusal of permission for alterations and additions sought under P.A. Ref. No. D08A/1022 which was refused on appeal to the Board under ABP Ref. No. PL06D.231879.

7.8. I note to the Board that the proposed development, which included a basement level, sought to increase the gross floor space of the replacement bungalow permitted under P.A. Ref. No. D04A/0039 to c483m² house. It also included a farmyard and outbuildings.

7.9. The Boards reasons and considerations related to the excessive size and prominent location of the development sought. It stated:

"The proposed development, by reason of its excessive size and prominent location in a high amenity area, would constitute a dominant and obtrusive feature in the landscape to the detriment of protected views from Puck's Castle Lane and the visual amenity of the area. The proposed development, above the 90 metre contour line, would therefore be contrary to the proper planning and sustainable development of the area."

7.10. In circa 2010, the appellants parents sought permission for a substantial two storey dwelling house under P.A. Ref. No. D10A/0025 granted for on the appellants parents landholding c400m to the subject bungalow at what was considered to be a less prominent and c610m from Pucks Castle Lane in the north west corner of the appellants parents landholding as well as served by the private lane from which access to the subject dwelling is dependent upon. It was consider that this was a less visually sensitive location where the proposed 393m² part single storey and part two storey dwelling could be absorbed in this high amenity zoned landscape setting without giving rise to the diminishment of the visual amenities of this highly sensitive location,

including but not limited to the protected views from Puck's Castle Lane as well as above the 90 meter contour line.

- 7.11. This dwelling house was for the appellants family and included as part of the public notices as well as accompanying drawings the demolition of the subject bungalow to which this appeal case relates.
- 7.12. Conditions No.s 1, 3 and 12 effectively sets out the removal of this bungalow and subsequent to the implementation of P.A. Ref. No. 10A/0025 it would appear that the carrying out of this development was done in a manner that failed to comply with the grant of permission. With the bungalow remaining on site and occupied. Alongside no compliance with Conditions 3 and 12 of the grant of permission. This failure to comply with the requirements of this grant of permission has given rise to an extensive enforcement history on this site.
- 7.13. More recently the Board refused retention permission for the subject bungalow under its determination of appeal case ABP-302259-18 (P.A. Ref. No. D18A/0477). Of note the documentation provided with this indicate that the application was made by the appellants parents on behalf of one of their children. The Boards first reason and consideration sets out that the applicants do not come within the scope of the housing need criteria as set out in the local through to national planning policy provisions as well as guidance relevant to this type of development.
- 7.14. This decision was made by the Board on the 5th day of December, 2018, and since then more robust local through to national planning policy provisions have come into force with this including and not limited to the Dún Laoghaire Rathdown County Development Plan, 2022-2028, at a local level through to at regional level the Spatial Economic Strategy – Eastern & Midland Region, 2019-2031, (RSES), and at national level the Code of Practice – Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10), 2021; the Climate Action Plan, 2021 and the National Development Plan, 2021 to 2030 to mention but a few.
- 7.15. Like the previous appeal case the planning application relates to permission for retention of development. It would appear that the construction was commenced on the subject bungalow c2009. It is unclear in relation to P.A. Ref. No. 10A/0025 from information available on the public record whether a commencement notice was submitted in relation to this grant of permission and it is apparent that the conditions

attached to this grant of permission have not been complied with. For example Condition No. 1 requiring development to be carried out as per plans and particulars accompanying this planning application. Also, Condition No. 3 requiring the establishment of a legal agreement prior to the commencement of development through to Condition No. 10 requiring that the materials from the demolished bungalow where practical to be reused and recycled to the satisfaction of the Planning Authority.

- 7.16. For the purposes of clarity, it should be noted that the period for which a development has been in place is immaterial to consideration of a planning application for permission for retention, although, there are implications regarding enforcement proceedings.
- 7.17. In addition, 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.
- 7.18. Further, the current Section 12.3.10 of the Development Plan sets out that the Council will generally seeks to protect the rural and open character of the countryside as well as foster sustainable development and in pursuance of this it sets out that their position in relation to ‘one-off’ houses is essentially restrictive and precautionary.
- 7.19. It also sets out in relation to rural housing on land subject to the high amenity zoning they will be assessed having regard to the following factors:
1. The applicant’s full-time employment or their commitment to operate a full-time business from their proposed home in a rural area, discouraging commuting to towns and cities.
 2. How their existing or proposed business contributed to and enhances the rural community.
 3. The nature of an applicant’s employment or business being compatible with rural areas, in order to discourage applicants whose business is not location dependent.

- 7.20. In relation to these criteria I am not convinced that the documentation provided by the appellant substantiates without doubt that they play a pivotal role in this 31ha farm, a role which could be reasonably be considered as full-time and/or that the farm is one that can provide a reasonable income source to sustain him and his father with this landholding being their full-time business either independently, co-dependently or in the longer term if they were to take over from their father. It is of note that this is a modest farm of 31ha with land within this holding still requiring reclamation on a landscape which is difficult for viable farming to support one or more families.
- 7.21. Further, it would appear that the increase in herd numbers is relatively recent, i.e. since the making of the previous application for retention permission which was refused on appeal to the Board, but is still low at 38 animals on the 10th day of June, 2021. Alongside increased prior to and during the time this current application was with the Planning Authority for its determination. In particular during the time in which further information was sought from the applicant as part of demonstrating a socio and economic rural housing need.
- 7.22. The documentation seeks to suggest that as a third part owner of the farm that the appellant is principally employed on the farm and the information provided does not support that they are as contended their on a daily basis. In addition, there is no justification that the substantial dwelling house permitted under P.A. Ref. No. 10A/0025 cannot accommodate the residential needs of this family farm or exceptional circumstance that would support the provision of an additional dwelling house.
- 7.23. Of further concern, Section 12.3.10.1 of the Development Plan sets out suitability of rural site's will be assessed against a number of criteria. In this regard, I raise concern in relation to firstly: "*that the landscape must be suitable to accommodate the proposed development*".
- 7.24. In this regard, I note that the site is highly exposed within what is a highly prominent and visible rural setting with the visual amenities of this high amenity zoned landscape subject to various protections including in this case the aforementioned specific local objective SLO 92 previously discussed.
- 7.25. The positioning of the proposed dwelling despite the single storey built form is highly visible in its location above the 90m contour line.

- 7.26. As is any extension to the private driveway, the associated shed, the level of surfacing for parking and amenity around the dwelling. With these adding to the cumulative visual impacts of this dwelling as well as its visual apparentness in the round in this highly sensitive location.
- 7.27. It is also a location that is visible from Pucks Castle Lane and Pucks Castle itself. Both afforded specific protection, under the local planning provisions.
- 7.28. Moreover, the position of the dwelling and the landscaping associated with this one-off dwelling does not seek to minimise its visual apparentness within its high amenity zoned land but rather seeks to maximise the panoramic views over the landscape setting.
- 7.29. As such I am not satisfied that this highly sensitive to change landscape can sustainably absorb the cumulative impact of this development and that such a modest landholding and farm venture justifies a second dwelling alongside the substantial dwelling house that was permitted on the premise this would be demolished together with all other associated additions including associated farm buildings, access roads and the like.
- 7.30. Secondly, the criteria: *“the site must be capable of accommodating all proposed structures together with the required water supply (borehole) and treatment system (as required) and wastewater treatment system”*. As set out by the Planning Authority’s Environmental Health Officer this in relation to the wastewater treatment system has not been demonstrated. Nor has the documentation accompanying this appeal submission provided adequate information on this matter or in my considered opinion on qualitative and sustainable potable water supply. These matters could, however, be considered as a new issue in the context of this appeal case.
- 7.31. Thirdly the criteria also include that satisfactory capacity of the access road/lane serving the proposed site. As already discussed whilst the private lane way serving the site is substandard in width and while I acknowledge a second dwelling using this lane is unlikely to result in substantial additional hazards it is of concern that there is no pull in provision along the length of this private lane for vehicles that may meet along it.
- 7.32. Particular to the east of the secondary access serving the proposed residential subdivision associated with the subject dwelling.

- 7.33. Moreover, to the west of the entrance serving the site onto this private lane sightlines are restricted.
- 7.34. More concerningly in my view is the fact that sightlines onto Puck's Castle Lane are severely restricted in both directions, with this lane accommodating a steady stream of traffic during my inspection as well as vulnerable road users including persons riding horses. The width, surfacing through to the horizontal and vertical alignment of this public lane is substandard and as discussed previously it is a '*Recreation Access Route*' which the Council seek to retain its established use as such.
- 7.35. I am not convinced that this lane has the capacity to absorb additional *ad hoc* development from one-off rural dwellings on what is a rural landscape in easy commuting distance of Dublin city and its hinterland. This issue, however, could be considered as a new issue in the context of this appeal case.
- 7.36. Fourthly, the criteria also includes "*no adverse impact on heritage items*" or protected areas. As previously set out the siting of the dwelling at this location adversely impacts on the visual curtilage associated with built heritage items provided protection including Pucks Castle and the protected views from Pucks Castle Lane above the 90m contour line. The site is also located in an area that is rich in archaeological heritage. Given these concerns I am not convinced on the basis of the information provided that a dwelling at this location would not give rise to any adverse visual impacts on heritage features within its landscape setting.
- 7.37. I am therefore not satisfied that the development sought under this application demonstrated compliance with Section 12.3.10 of the Development Plan.
- 7.38. In relation to regional and national planning provisions I note that Objective PHP23 of the Development Plan sets out that it is a policy of the Council to restrict the spread of one-off housing in the rural countryside and effectively channel such development to small villages subject to the availability of necessary services.
- 7.39. In addition, it sets out that one-off housing will only be deemed acceptable where it is clearly shown that there is a genuine local need to reside in a rural area due to locationally specific employment or local social needs.
- 7.40. This has not been demonstrated by the applicant in this case nor have they fully demonstrated that the proposed development would not give rise to any serious

negative impact on the landscape nor would it put an excessive strain on infrastructure.

- 7.41. As said the public road network is substandard and it is unclear if the wastewater treatment system together with the potable water supply is to the required standard and in a manner consistent with Section 12.3.10.9 and 12.3.10.10 of the Development Plan.
- 7.42. Of further concern Section 12.3.10.2 of the Development Plan sets out that design that is incompatible with the site conditions, to the extent that it would be intrusive in the landscape will not be permitted and that buildings should not be located on an elevated position. I am of the view that this dwelling is positioned in a visually intrusive location on an elevated and prominent site within this high amenity zoned land. At such a location and having regard to the design as well as layout the dwelling would result in light pollution within this rural area. With the light pollution being visible from a significant distance given the exposed, elevated and prominent location of the dwelling on the foothills of the Dublin Mountains where there are long distant panoramic views out over this rural landscape.
- 7.43. I consider that Objective PHP23 is consistent with NPO 19 of the NPF and RPO 4.80 of the RSES which seeks such applications 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. As opposed to a desire to reside in a rural location.
- 7.43.1. In addition, I note that the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of Environment, Heritage and Local Government 2005 recommend in un-serviced rural areas, avoidance of sites where it is inherently difficult to provide and maintain wastewater treatment and disposal facilities. I am not satisfied on the basis of the information on file, that the impact of the proposed development would not give rise to a risk of groundwater pollution in an area highly dependent on private wells for their potable water supply.
- 7.44. It is my considered opinion that no demonstratable functional economic or social requirement for a one-off rural house at this location has been provided and no exceptional circumstances or other justification to support this modest landholding with only modest substantiated rural activities requires the provision of two dwelling houses

on high amenity zoned lands on an elevated, exposed and sensitive to change site. In this case to permit the dwelling would be contrary to zoning objective 'G' which the Development Plan sets out under Chapter 4 that dwellings will only be permitted on suitable sites where applicants have satisfactorily demonstrated there is a genuine requirement for housing because of their principal employment and where no potential negative amenity impacts arise.

7.45. Based on the above considerations I generally concur with the Planning Authority's first reason for refusal and I consider that the previous Boards reason for refusal of the retention of the subject bungalow under ABP-302259-18 has not been overcome. To permit the proposed development would be contrary to the proper planning and sustainable development of the area.

7.46. I note that this reason for refusal of retention permission included the concern that the development would materially contravene the 'G' land use zoning objective of the site and its setting.

7.47. For clarity I therefore note that the Board may only grant permission where it considers one or more of four specified criteria are met. In this regard I submit that the development sought under this application is:

- 1) Not of strategic or national importance.
- 2) The objectives in the Development Plan are clearly stated and are not conflicting.
- 3) There is no imperative in the regional planning guidelines for the area or other guidelines or Government policy which would support the proposed development and that the pattern of development and permissions granted in the area since the making of the plan has not altered.

7.47.1. With this being the case, it is my considered opinion that the Board is precluded from a grant of permission in this instance.

7.48. **Appropriate Assessment**

7.48.1. The matter of '*Appropriate Assessment*' requires examination.

7.48.2. Having regard to the nature and scale of the development sought under this application, 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.

8.0 Recommendation

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

9.0 Reasons and Considerations

1. The site of the proposed development to be retained is located within an area zoned 'G' with the zoning objective 'to protect and improve high amenity areas' and in an area where housing is restricted to persons demonstrating a genuine requirement for housing in accordance with policy objective PHP23 of the Dún Laoghaire-Rathdown County Development Plan 2022-2028.

Having regard to the documentation submitted with the planning application, the Planning Authority is not satisfied that the Applicant has adequately demonstrated a functional economic and/or social genuine local need to reside in this rural area.

It is considered, therefore, that the Applicant does not comply with the housing need criteria as set out in Section 4.3.1.6 Policy Objective PHP23 and Section 12.3.10 One-Off Housing in the Countryside of the 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 Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage, and Local Government where housing is restricted to persons demonstrating local need and demonstrating site suitability. 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 nor that the site is appropriate and suitable for a one-off dwelling house.

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.

It is therefore considered that 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 in a highly sensitive to change rural locality. It would also militate against the preservation of a rural environment that is afforded protection as an area of high amenity value where developments, including developments like one-off rural housing are discouraged.

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

Patricia-Marie Young

Planning Inspector

6th day of March, 2023.