



An
Bord
Pleanála

Inspector's Report ABP-314367-22

Development

The construction of a storey and half dwelling with single storey detached domestic garage to the north of the existing dwelling at Ben Lomond. Comprising ground floor living accommodation and utilities with 3 bedrooms, master ensuite, main bathroom and home office at first floor level. Boundary walls and pillars, off street parking from private internal access roadway. To include the demolition / part demolition of an existing storey and half stone shed building to the west of Ben Lomond to provide vehicular access onto private internal access road leading onto Channel Road. Including connection to the foul water sewer on Channel Road and all associated services.

Location

Ben Lomond, Channel Road, Rush, Co. Dublin.

Planning Authority

Fingal County Council

Planning Authority Reg. Ref. F22A/0183

Applicant(s) Phil Casey

Type of Application Permission

Planning Authority Decision Refusal

Type of Appeal First Party v. Decision

Appellant(s) Phil Casey

Observer(s) None.

Date of Site Inspection 27th March, 2023

Inspector Robert Speer

1.0 Site Location and Description

- 1.1. The proposed development site is located along the northern side of Channel Road in the South Shore area of Rush, Co. Dublin, approximately 1.6km southwest of Lower Main Street in Rush Town Centre, where it occupies a backland location to the rear of existing housing sited along Channel Road to the southeast and Healy's Lane to the southwest. The broader South Shore area is predominantly characterised by an extensive proliferation of piecemeal housing and ribbon development along its roadways, although this is interspersed in parts by a number of market garden and small horticultural / glasshouse enterprises. However, the north-westerly extent of the South Shore area between Channel Road and Whitestown Road (the R128 Regional Road) wherein the development site is located includes a greater expanse of undeveloped agricultural lands.
- 1.2. The site itself has a stated site area of 0.1972 hectares, is irregular in shape, and comprises part of a generally flat agricultural field located to the rear of existing housing as well as an associated access track extending from Channel Road and part of the curtilage of an adjacent dwelling house known as 'Ben Lomond'. It forms part of a larger landholding that encompasses the wider field, the detached single storey property of 'Ben Lomond', and a series of sheds / outbuildings located to the rear of that dwelling. The siting of the proposed dwelling house is located towards the northernmost end of the field alongside an existing glasshouse and is bounded by agricultural lands to the northwest, northeast and southeast with existing housing along Healy's Lane to the southwest.

2.0 Proposed Development

- 2.1. The proposed development consists of the construction of a detached one-and-a-half storey dwelling house based on 'T'-shaped plan with a stated floor area of 185m² and a ridge height of 7.645m. The overall design is somewhat conventional although it incorporates some elements of more contemporary architecture, including a pair of cement cladded box dormer windows to the front elevation. External finishes include a white render, selected dry stone cladding, and black roof tiles.
- 2.2. Vehicular access will be provided through the widening of an existing entrance arrangement onto Channel Road and the construction of a new internal access road

with a carriageway width of 5.5m and an adjacent footpath that will extend between the applicant's current residence ('Ben Lomond') and a neighbouring property to the west before terminating in a turning head. The provision of this access road will require the demolition of an existing storey-and-a-half stone shed / building to the west of 'Ben Lomond' and the realignment & reinstatement of the boundary wall of that property.

2.3. It is also proposed to construct a single storey, detached domestic garage (floor area: 35m²) to the front of the new dwelling house.

2.4. Water supply and sewerage services are available via connection to the public mains.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. Following the receipt of a response to a request for further information, on 20th July, 2022 the Planning Authority issued a notification of a decision to refuse permission for the proposed development for the following single reason:

- The site is located within the 'RU' zoning objective under the Fingal Development Plan, 2017-2023, the objective of which is to 'protect and promote in a balanced way, the development of agriculture and rural-related enterprise, biodiversity, the rural landscape, and the built and cultural heritage', in a 'Rural Area under Strong Urban Influence' in the 'Sustainable Rural Housing, Guidelines for Planning Authorities' (DoEHLG, 2005). 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 demonstratable economic or social need to live in a rural area. Having regard to the information provided and given that the applicant owns and resides in an existing dwelling adjacent to the site within the applicant's landholding, the Planning Authority is not satisfied that the applicant has demonstrated a rural generated need for a house at this location. It is considered, therefore, that

the applicant does 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, and would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

An initial report details the site context, planning history, and the applicable policy considerations, including the site location within an 'Area under Strong Urban Influence' and the relevant 'RU: Rural' land use zoning objective (although I would advise the Board that the recently adopted Fingal Development Plan, 2023-2029 has superseded that upon which the Planning Authority's assessment is based). It notes that the proposed development is generally acceptable in principle before stating that it will need to be assessed in accordance with the rural settlement strategy by reference to Objective RH43 of the Development Plan given the site location within the South Shore area of Rush. In this respect, particular concerns are raised as regards the applicant's ownership of his current place of residence (the neighbouring property known as 'Ben Lomond') and his need for a further dwelling. The remainder of the report analyses other issues including traffic safety, visual amenity, and potential impacts on residential amenity, before recommending that further information be sought as regards the submission of a 'Supplementary Application Form for Planning Permission for a Dwelling in a Rural Area' as well as further details of the applicant's housing need.

Following the receipt of a response to a request for further information, a final report was prepared which considered the applicant's submission that their current home was no longer adequate for his family's needs and that its sale would be used to fund the construction of the proposed dwelling house. This report reiterates the site location within an 'Area under Strong Urban Influence' as per the '*Sustainable Rural Housing, Guidelines for Planning Authorities*' wherein it is policy to distinguish between urban-generated and rural-generated housing need, while also referencing the National Planning Framework which seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstratable

economic or social need to live in a rural area. It proceeds to state that as the applicant is already the owner-occupier of an adjacent dwelling, the Planning Authority is not satisfied that he has a rural-generated need or that he comes within the scope of the housing need criteria set out in the Guidelines and the NPF for a dwelling at the location proposed. The report thus concludes by recommending a refusal of permission for the reason stated.

3.2.2. **Other Technical Reports:**

Water Services: No objection, subject to conditions.

Environment (Waste Enforcement & Regulation): No objection.

Parks and Green Infrastructure Division: States that the site plans do not show an existing street tree located within the public footpath, the removal of which will be required to facilitate the proposed entrance widening. While it would be preferable to retain this tree, the Parks and Green Infrastructure Division is amenable to facilitating the proposed development, subject to conditions, including a requirement that the applicant pay a compensatory financial contribution towards the cost of replacement tree planting at a suitable location in the general environs of the site.

Transportation Planning: No objection, subject to conditions.

3.3. **Prescribed Bodies**

Irish Water: No objection, subject to conditions.

3.4. **Third Party Observations**

None.

4.0 **Planning History**

4.1. **On Site:**

- 4.1.1. PA Ref. No. F20A/0365. Was granted on 22nd October, 2020 permitting Philip & Caitriona Casey permission for the renovation and extension of an existing dwelling to include: 1) Demolition of existing single storey conservatory extension to rear; 2) Demolition of existing outhouse to rear; 3) Construction of single storey kitchen / utility / bedroom extension to rear; 4) Conversion of attic to bedroom with dormer extension to rear, and 3 No. velux rooflights to front, to include removal of 2 No.

chimneys; 5) Construction of new vehicular access to front with access from Channel Road, to include new piers, and dishing of footpath; 6) Widening of existing vehicle access to side / rear to include relocation of existing boundary wall to southwest elevation; 7) Associated site works. All at Ben Lomond, Channel Road, Rush, Co. Dublin.

5.0 Policy and Context

5.1. National and Regional Policy

- 5.1.1. The ‘*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*’ promote the development of appropriate rural housing for various categories of individual as a means of ensuring the sustainable development of rural areas and communities. Notably, the proposed development site is located in an ‘*Area under Strong Urban Influence*’ as indicatively identified by the Guidelines.

5.2. Development Plan

5.2.1. Fingal County Development Plan, 2023-2029:

Land Use Zoning:

The proposed development site is located in an area zoned as ‘*RU*’ with the stated land use zoning objective to ‘*Protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage*’.

Objective Vision: Protect and promote the value of the rural area of the County. This rural value is based on: Agricultural and rural economic resources, Visual remoteness from significant and distinctive urban influences, A high level of natural features. Agriculture and rural related resources will be employed for the benefit of the local and wider population. Building upon the rural value will require a balanced approach involving the protection and promotion of rural biodiversity, promotion of the integrity of the landscape, and enhancement of the built and cultural heritage.

Other Relevant Policies / Sections:

Chapter 2: Planning for Growth:

Section 2.7: Settlement Strategy: Rural Clusters and Rural Area:

Noting that rural areas within Fingal are categorised as being under strong urban influence, a key challenge is to ensure a balance between facilitating those with a genuine need to reside in rural Fingal while managing urban generated demand. Fingal's Rural Housing Policy is based on requirements for a demonstrable economic or social need to live in a rural area and ensure that siting and design adhere to statutory guidelines and design criteria. This approach follows on from the Rural Housing Guidelines 2005.

Policy CSP45: Rural Housing:

In line with RPO 4.80, manage urban generated growth in Rural Areas Under Strong Urban Influence by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory Guidelines and plans, having regard to the viability of smaller towns and rural settlements.

Policy CSP46: Rural Settlement Strategy:

Respond to rural-generated housing need by means of a rural settlement strategy which directs the demand where possible to Rural Villages and Rural Clusters and permit housing development in the countryside only for those people who have a genuine housing need in accordance with the Council's Rural Housing Policy and where sustainable drainage solutions are feasible.

Obj. CSO81: Rural Settlement Strategy:

Implement the Rural Settlement Strategy contained in Chapter 3 Sustainable Placemaking and Quality Homes and associated Development Management Standards set out in Chapter 14.

Chapter 3: Sustainable Placemaking and Quality Homes:

Section 3.5.15: Housing in Rural Fingal:

Policy SPQHP45: Rural Housing:

Provide viable options for the rural community through the promotion of appropriate sustainable growth of the rural villages and clusters, balanced by carefully controlled residential development in the countryside.

Policy SPQHP46: Rural Settlement Strategy:

Respond to the rural-generated housing need by means of a rural settlement strategy which will direct the demand where possible to rural villages, rural clusters and permit housing development within the countryside only for those people who have a genuine rural generated housing need in accordance with the Council's Rural Housing Policy and where sustainable drainage solutions are feasible.

Obj. SPQHO53: Ribbon Development:

In areas which are subject to either the RU, GB, or HA zoning objective, presume against development which would contribute to or intensify existing ribbon development as defined by Sustainable Rural Housing, Guidelines for Planning Authorities, 2005. A relaxation may be considered where permission is sought on the grounds of meeting the housing needs of the owner of land which adjoins an existing house of a member of his/her immediate family where it is clearly demonstrated that no other suitable site is available.

Section 3.5.15.3: Fingal Rural Settlement Strategy Rural Generated Housing Need:

The Fingal Rural Settlement Strategy serves to meet settlement needs which are the result of a genuine rural-generated housing requirement. Residential development in areas zoned RU, HA, GB and RC which is urban generated will be restricted to preserve the character of Rural Fingal and to conserve this important limited resource. The countryside for the purposes of this section of the Plan are those areas with the rural zoning objectives identified as Rural (RU), Greenbelt (GB) and High Amenity (HA). Rural-generated housing needs are considered to be the housing needs of people who have long standing existing and immediate family ties,

or occupations which are functionally related to the rural areas of the County and are specifically defined as follows:

- Members of farming families who are actively involved in the family farm which is located within rural Fingal as defined in Objective SPQHO80 and Chapter 14 Development Management Standards.
- Persons who have close family ties to the Fingal rural community as defined in Table 3.5 paragraph (i)
- Persons who have been in long term employment, which is related to, and supportive of, the rural community as defined in Table 3.5 paragraph (ii) and where the employment is dependent on the residence of the person within the rural community.
- Persons who are a member of a rural-located family, who are considered because of exceptional and demonstrated health reasons to have a need to reside beside their family home in the rural area as defined in Table 3.5 paragraph (iii).
- Persons who are 'a bona fide' applicant, as defined in Table 3.5 paragraph (iv), and who have a demonstrated commitment to set up a rural-related business and who may not already live in the area, nor have family connections there, or be engaged in particular employment or business classified with the local needs criteria. The applicant must have a clearly demonstrated need to live in the rural area to ensure the functioning of the business.

Persons who have genuine rural-generated housing need will be considered for planning permission for a dwelling house in those parts of the open countryside which have zoning objective RU or GB.

The maximum number of incremental houses which will receive planning permission within the rural area on the basis of an existing house is limited. Each of the rural zoning objectives has a limit to the number of incremental houses which will be permitted. Where exceptional health circumstances can be demonstrated an additional house will be considered under each of the rural zoning objectives. The maximum number of dwellings permitted under any of the above zonings will be less

any additional house which has been granted planning permission since 19th October 1999.

No individual applicant will receive planning permission for more than one house.

Section 3.5.15.5: New Housing for the Rural Community other than those who are Actively Engaged in Farming

Obj. SPQH081: RU and GB lands:

Permit new rural dwellings in areas which have zoning objectives RU or GB on suitable sites where the applicant meets the criteria set out in Table 3.5.

Table 3.5: Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing:

- i. One member of a rural family who is considered to have a need to reside close to their family home by reason of close family ties, and where a new rural dwelling has not already been granted planning permission to a family member by reason of close family ties since 19th October 1999. The applicant for planning permission for a house on the basis of close family ties shall be required to provide documentary evidence that:
 - o S/he is a close member of the family of the owners of the family home.
 - o S/he has lived in the family home identified on the application or within the locality of the family home for at least fifteen years.
- ii. A person who has been in employment in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community/economy for fifteen years prior to the application for planning permission, and has not already been granted planning permission for a new rural dwelling since the 19th October 1999. Documentary evidence of such employment is required.
- iii. A person who is an immediate member of a rural family who has not been granted permission for a rural dwelling, since the 19th October 1999, and is considered to have a need to reside adjacent to the family home by reason of that person's exceptional health circumstances. The application for a rural dwelling must be supported by two sworn affidavits from relevant and qualified

professionals, with at least one from a registered medical practitioner. A qualified representative of an organisation which represents or supports persons with a medical condition or disability may supply the other.

It is to be noted that criterion no. (iii) applies in areas which have zoning objective, HA, as well as in areas with zoning objective GB and RU.

- iv. A 'bona fide' applicant who may not already live in the area, nor have family connections there or be engaged in particular employment or business classified with the local needs criteria, subject to the following considerations:

Such applicants will be required to satisfy the Council of their long-term commitment to operate a full-time business from their proposed home in a rural area, as part of their planning application.

The applicant will outline within a submitted Business Plan how their business will contribute to and enhance the rural community and will demonstrate to the satisfaction of the Council that the nature of their employment or business is compatible with, and addresses and satisfies local needs, and will protect and promote the rural community.

The applicant will satisfy the Council that the nature of their employment or business is dependent on its location within the rural area so as to discourage applicants whose business is not location dependent.

The applicant will demonstrate their commitment to the proposed business through the submission of a comprehensive and professionally prepared Business Plan, and through submission of legal documentation that they have sufficient funding committed to start and operate the business.

Applicants whose business is not location-dependent will not be considered.

Section 3.5.15.7: *Layout and Design for Housing in Rural Fingal:*

Policy SPQHP55: Layout and Design of Rural Housing:

Require that all new dwellings in the rural area are sensitively sited, demonstrate consistency with the immediate Landscape Character Type, and make best use of the natural landscape for a sustainable, carbon efficient and sensitive design.

Obj. SPQH084: Compliance with Development Management Standards in Rural Areas:

Applications for dwellings in rural areas of Fingal will be required to demonstrate compliance with layout and design criteria set out in Chapter 14 Development Management Standards including the carrying out of an analysis/feasibility study of the proposed site and of the impact of the proposed house on the surrounding landscape in support of applications for planning permission.

Section 3.5.15.8: South Shore Rush:

The South Shore area of Rush consists mainly of small landholdings with a mixture of market gardening and single and cluster housing. The pattern of development is increasingly residential with a road infrastructure which is limited in terms of modern road requirements, but which forms part of the overall rural residential character of the area. The area also borders on Rogerstown Estuary, which hosts two Natura 2000 sites, Rogerstown Estuary SAC and Rogerstown Estuary SPA. Certain areas of the South Shore are also prone to flooding and are at risk from coastal erosion. Recognising the established mix of horticulture and residential land uses within this area, and the availability of water services infrastructure, the settlement strategy for housing in the open countryside will be more flexible within the area demarcated on the Plan maps. This area is located to the south and east of the R128 from the junction with Spout Road, immediately to the west of Rush.

Housing will be considered for persons who have been resident in the South Shore, or within the development boundary of Rush or within one kilometre by road of either of these areas for a minimum of ten years. Housing will also be considered for a mother, father, son or daughter of a resident who qualifies. Houses will be sympathetic to the rural and coastal character of the area. Given the sensitivities of the area, because of its location adjacent to the coast and to Rogerstown Estuary, there will be a requirement on applicants to demonstrate that any proposed new development will not be at risk of flooding or erosion and will not negatively impact, either directly or indirectly, the designated sites within Rogerstown Estuary.

Obj. SPQHO92: Applications for Houses within the South Shore Area:

Consider planning applications for a house located within the South Shore area of Rush from persons who have been resident for a minimum of ten years within the South Shore area or within the development boundary of Rush or within one kilometre by road of either of these areas, subject to sustainable planning and consideration of climate change impacts.

Obj. SPQHO94: Occupancy Requirement for House in the South Shore Area:

Require that any house which is granted planning permission in the South Shore area will be subject to an occupancy requirement whereby the house must be first occupied as a place of permanent residence by the applicant and/or members of his/her immediate family for a minimum period of seven years.

Obj. SPQHO95: Flooding and Coastal Erosion in the South Shore Area:

Require that an applicant for a house in the South Shore area demonstrates, to the satisfaction of the Planning Authority, that the site is not and will not be subject to flooding or erosion in line with national climate change predictions.

Obj. SPQHO96: Ecological Integrity of Sites in the South Shore Area:

Require that an applicant demonstrates that the impact of any proposed house will not adversely affect, either directly or indirectly, the ecological integrity of any European site.

Chapter 9: Green Infrastructure and Natural Heritage:

Section 9.5.1.5: Landscape:

This theme includes the Special Amenity Areas on Howth Head and the Liffey Valley, High Amenity Areas, Highly Sensitive Landscapes and County Geological Sites.

Policy GINHP9: Landscape Character:

Ensure green infrastructure provision responds to and reflects landscape character including historic landscape character, conserving, enhancing and augmenting the existing landscapes and townscapes of Fingal which contribute to a distinctive sense of place.

Section 9.6.14: Landscape Character Assessment: Coastal Character Type:

Coastal Character Type is categorised as having an exceptional landscape value. The type forms the eastern boundary of the County and contains a number of important beaches, islands and headlands that together create a landscape of high amenity and landscape value. A number of important settlements are located within this area, including Balbriggan, Skerries, Rush, Malahide, Portmarnock and Howth. The land is generally low lying, with the exception of some prominent headlands and hills in the northern part of the area, Howth and the offshore islands. Most of the Howth peninsula is covered by the 1999 Special Amenity Area Order (SAAO).

There are a number of important demesne or estate landscapes containing important woodlands in or adjoining this area at Ardgillan, Hampton, Milverton and Portrane. Horticulture (around Rush), golf courses and individual dwellings are prevalent land uses in the area also. Views along the coast are generally contained within headlands, ridgelines and harbours, creating a number of visual compartments.

The Coastal Character Type is categorised as having an exceptional landscape value. This value is arrived at due to the combination of visual, ecological, recreational and historical attributes. The area has magnificent views out to sea, to the islands and to the Mourne and Wicklow mountains and contains numerous beaches and harbours. The area's importance is highlighted by the High Amenity zoning covering substantial parts of the area. The area is rich in archaeological, architectural and natural heritage and is of high ecological value.

Chapter 14: Development Management Standards:

Section 14.12.2: Design Criteria for Housing in the Countryside

Obj. DMSO41: New Dwellings in Rural Areas:

Ensure that new dwellings in the rural area are sensitively sited, demonstrate consistency with the immediate Landscape Character Type, and make best use of the natural landscape for a sustainable, carbon efficient and sensitive design. A full analysis/feasibility study of the proposed site and of the impact of the proposed house on the surrounding landscape will be required in support of applications for planning permission.

Obj. DMSO43: Siting of New Dwellings in a Rural Area:

Encourage new dwellings in the rural area to be sited at a location in close proximity to the family home where the drainage conditions can safely accommodate the cumulative impact of such clustering and where such clustering will not have a negative impact on the amenities of the original house. Where this arrangement is clearly demonstrated not to be available, permit the new dwelling to be located on an alternative site which is within two kilometres from the family home, or, where the applicant has land zoned HA within 2 km from the family home and this arrangement is demonstrated not to be available to build, and the applicant has land zoned RU on lands within 3.5 km of the family home, permit the new dwelling to be located on the RU zoned site which is within 3.5 km of the family home, or, in the case of applications made under Objective SPQHO83 within five kilometres outside Noise Zone A and subject to the East/West of the M1 stipulation

Section 14.12.3: Design Guidelines for Rural Dwellings

Section 14.12.11: South Shore Rush:

Subject to all criteria set out in Chapter 3, consider planning applications for a dwelling located within the South Shore area of Rush from persons who have been resident for a minimum of ten years within the South Shore area or within the development boundary of Rush or within one kilometre by road of either of these areas, subject to sustainable planning and consideration of climate change impacts.

The Council will consider planning applications for a house located within the South Shore area of Rush from a mother, father, son or daughter of a resident who qualifies under Objective SPQHO92 and subject to sustainable planning and consideration of climate change impacts.

Permission for a dwelling house in the South Shore area will be subject to an occupancy condition requiring that the dwelling is first occupied as a place of permanent residence by the applicant and/or members of his/ her immediate family for a minimum period of seven years.

It will be a requirement that an applicant for a house in the South Shore area, demonstrates to the satisfaction of the Planning Authority, that the site is not and will not be subject to flooding or erosion in line with national climate change predictions.

It will be a requirement that an applicant demonstrates that the impact of any proposed house will not adversely affect, either directly or indirectly, the ecological integrity of any European site.

New houses within the South Shore area will be allowed for, subject to normal sustainable planning criteria and in line with climate change impacts, which have demonstrated to the satisfaction of the Planning Authority that they cannot connect to a public sewer within a reasonable period of time, on suitably sized sites and subject to the requirements of the EPA Code of Practice.

Applications for multi-unit schemes will not be permitted.

Appendix 8: Map based Local Objectives:

No. 13 - Exclude multiple unit housing estates in the South Shore area of Rush.

No. 14 - Ensure that any new residential development in the South Shore, indicated on the map by a boundary line, is in compliance with the specific housing policy relevant to the South Shore area.

5.3. Natural Heritage Designations

- 5.3.1. The following natural heritage designations are located in the general vicinity of the proposed development site:

- The Rogerstown Estuary Proposed Natural Heritage Area (Site Code: 000208), approximately 600m south of the site.
- The Rogerstown Estuary Special Protection Area (Site Code: 004015), approximately 700m southwest of the site.
- The Rogerstown Special Area of Conservation (Site Code: 000208), approximately 700m southwest of the site.
- The Portrairie Shore Proposed Natural Heritage Area (Site Code: 001215), approximately 2.8km southeast of the site.
- The Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000), approximately 2.9km east of the site.

5.4. EIA Screening

- 5.4.1. Having regard to the minor nature and scale of the proposed development, the site location within an existing serviced area outside of any protected site, the nature of the receiving environment, the limited ecological value of the lands in question, the availability of public services, and the separation distance from the nearest sensitive location, 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

- The Planning Authority has misapplied its rural housing policy in the assessment of the proposed development. The subject site is located within the South Shore area of Rush where the following specific objectives of the Fingal Development Plan, 2017-2023 apply as regards the delivery of housing:
 - RF43: Consider planning applications for a house located within the South Shore area of Rush from persons who have been resident for a

minimum of 10 years within the South Shore area or within the development boundary of Rush or within one kilometre by road of either of these areas, subject to sustainable planning and consideration of climate change impacts.

- RF44: Consider planning applications for a house located within the South Shore area of Rush from a mother, father, son or daughter of a resident who qualifies under Objective RF43, and subject to sustainable planning and consideration of climate change impacts.

Given that the applicant has provided sufficient evidence of his residence in the area for the last 18 No. years, he qualifies under Objective RF43 and the proposed development should have been granted permission.

- Contrary to the assessment by the Planning Authority, the Development Plan objectives applicable to the South Shore area do not place any restrictions on applicants who have existing dwellings or landholdings in the area. Indeed, having regard to the requirements of Objectives RF43 & Rf44, it is of note that an existing residence in the area is a prerequisite for an applicant to be considered eligible while a landholding is a general requirement for the construction of a new dwelling.
- Within the reason for refusal, the proposed development site has been categorised as being located within an '*Area under Strong Urban Influence*' as per the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*'. However, the Settlement Strategy set out in Chapter 2 of the Fingal Development Plan, 2017-2023 classifies Rush as a '*Self-Sustaining Town*' while Objective SS20 aims to '*Manage the development and growth of Lusk, Rush and Skerries in a planned manner linked to the capacity of local infrastructure to support new development*'. Notably, Objective SS20 was not amended as part of Variation No. 2 of that Development Plan (the purpose of which was to align with the National Planning Framework and the Regional Spatial & Economic Strategy for the Eastern and Midland Region) which continued to designate Rush as a Self-Sustaining Town.
- Given that the proposed development includes for the demolition of existing vacant and underutilised agricultural sheds, the proposed development site

should be considered to comprise a 'brownfield' site. The reuse of such brownfield lands is prioritised in the NPF where they are well serviced and in close proximity to existing amenities. In this regard, the 'RU' land use zoning of the site is not considered to be contributing to the efficient utilisation of the existing transport, drainage and social infrastructure benefiting the area of Rogerstown which is stated as being '*essentially residential with some significant vacant sites*' in the Development Plan.

- The proposed development provides for a compact and sustainable form of development that complies with the settlement strategy for the South Shore area. Furthermore, the site is well located and serviced within an established residential area of Rush which provides easy access to a variety of amenities.
- The proposed development accords with the objectives of the National Planning Framework and the Regional Spatial & Economic Strategy for the Eastern and Midland Region by providing for a compact and sustainable infill / brownfield development in a well serviced and located site within an established residential area. It will be in keeping with the existing pattern, scale and massing of residential development in the surrounding area. Furthermore, it will represent an effective and efficient use of an underutilised brownfield site proximate to local amenities with a high quality of residential amenity.
- The report of the case planner has acknowledged that the proposed development is compatible with the overall policies and objectives of the applicable '*RU*' land use zoning. It has also been accepted that the proposal would not have any undesirable effects and would be consistent with the proper planning and sustainable development of the area.
- Although the site is located in a 'Transitional Zone' close to lands zoned as '*GE: General Employment*', the report of the case planner has concluded that the proposed development will not represent an abrupt transition in scale within the transitional location and will not undermine the development potential of the adjacent lands.
- The proposed development accords with the applicable development management standards set out in the Development Plan.

- The proposed dwelling will not adversely impact on the visual amenity of the area or the wider streetscape nor will it detract from the residential amenity of neighbouring dwellings by reason of overlooking, overshadowing or an overbearing appearance.
- The sightlines available in both directions from the proposed entrance will exceed the requirements of the Design Manual for Urban Roads and Streets.
- The proposed development, individually or in combination with another plan or project, will not have any significant effect on any European Sites during the construction and operation phases.
- The proposed development does not necessitate environmental impact assessment.
- No objections have been received from third parties or other consultees.
- The applicant and his family presently reside in the existing dwelling known as 'Ben Lomond', however, this is not functional as a family home for 4 No. people. The proposed development addresses the housing needs of the applicant and is the only financially viable solution.

6.2. **Planning Authority Response**

- No further comments other than to request the Board to uphold the decision of the Planning Authority.

6.3. **Observations**

None.

6.4. **Further Responses**

None.

7.0 **Assessment**

- 7.1. From my reading of the file, inspection of the site and assessment of the relevant policy provisions, I conclude that the key issues raised by the appeal are:

- The principle of the proposed development / rural housing policy
- Other issues
- Appropriate assessment

These are assessed as follows:

7.2. The Principle of the Proposed Development / Rural Housing Policy:

- 7.2.1. From a review of the available information, it is apparent that the pertinent issue in the assessment of the subject proposal concerns the correct application and interpretation of the relevant rural housing policy provisions of the Fingal Development Plan, 2023-2029 (In this regard, I would advise the Board at the outset that the Fingal Development Plan, 2017-2023, which informed the Planning Authority's determination of the planning application, has since been superseded by the Fingal Development Plan, 2023-2029 although the broader policy provisions of the rural settlement strategy as they relate to the matter at hand remain unchanged). In particular, it will be necessary to review the proposal as regards compliance with both the wider county rural housing policy and the specific provisions applicable within the South Shore area of Rush.
- 7.2.2. In assessing the overall principle of the proposed development, it is of relevance in the first instance to note that the subject site is located within an '*Area under Strong Urban Influence*' as indicatively identified by the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*'. These '*Areas under Strong Urban Influence*' are described as exhibiting characteristics such as their proximity to the immediate environs or the close commuting catchments of large cities and towns (such as Dublin City and the M1 Corridor) and will generally be under considerable pressure for the development of housing due to their proximity to these urban centres or the major transport corridors accessing them. In this respect, I would also draw the Board's attention to the Eastern and Midland Regional Spatial & Economic Strategy and, in particular, to Regional Policy Objective (RPO) 4.80 which requires local authorities to manage urban generated growth in '*Rural Areas Under Strong Urban Influence*' (i.e. the commuter catchment of Dublin, large towns and centres of employment) by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and

plans, having regard to the viability of smaller towns and settlements. Furthermore, within any such *'areas under urban influence'*, the National Planning Framework ('Project Ireland 2040: Building Ireland's Future') states that it will be necessary for applicants to demonstrate *'a functional economic or social requirement for housing need'* (with National Policy Objective No. 19 stating that the provision of single housing in rural areas under urban influence is to be based on the core consideration of a demonstrable economic or social need to live in a rural area and the siting and design criteria for rural housing contained in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements).

7.2.3. Within Section 2.7: *'Settlement Strategy: Rural Clusters and Rural Area'* of the Development Plan it is acknowledged that all rural areas within Fingal are categorised as being under *'strong urban influence'* and that this presents a challenge in achieving a balance between facilitating those with a genuine need to reside in rural Fingal while managing urban generated demand. Notably, it is expressly stated that Fingal's Rural Housing Policy is based on the requirements that applicants establish a demonstrable economic or social need to live in a rural area while ensuring that the siting and design of proposals adhere to statutory guidelines and design criteria (this approach follows on from the *'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005'*).

7.2.4. Having regard to the foregoing, I would advise the Board that the proposed development site is zoned as *'RU'* in the Fingal County Development Plan, 2023-2029 with the stated land use zoning objective to *'Protect and promote in a balanced way, the development of agriculture and rural related enterprise, biodiversity, the rural landscape, and the built and cultural heritage'* and, therefore, the provisions of Policies CSP45 & CSP46 as well as Objective CSO81 of the Development Plan are applicable in this instance. By way of clarity, Policy CSP45: *'Rural Housing'* references RPO 4.80 of the RSES and states that urban-generated growth will be managed by ensuring that the provision of single houses in the open countryside in *'Rural Areas Under Strong Urban Influence'* is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory Guidelines and plans, having regard to the viability of smaller towns and rural settlements. In turn, Policy CSP46: *'Rural Settlement Strategy'* states that any rural-generated housing need will be directed, where possible, to Rural Villages and

Rural Clusters with housing development in the countryside to be limited to those with a genuine housing need in accordance with the Council's Rural Housing Policy (this is given effect by Obj. CSO81: '*Rural Settlement Strategy*' which serves to implement the rural settlement strategy set out in Chapter 3 of the Plan and the associated Development Management Standards contained in Chapter 14).

7.2.5. Section 3.5.15: '*Housing in Rural Fingal*' reiterates that both the NPF and RSES, with specific reference to NPO 19 and RPO 4.80 respectively, seek to ensure that in areas under urban influence the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area. Policy SPQHP46: '*Rural Settlement Strategy*' subsequently emphasises that housing development in the countryside will only be permitted for those people who have a '*genuine rural generated housing need*' in accordance with the Council's Rural Housing Policy (this provision differs slightly from Policy CSP46 which simply refers to a '*genuine housing need*').

7.2.6. Section 15.5.15.3 of the Plan proceeds to clarify that the rural settlement policy applies to all lands zoned as 'RU' before setting out that '*rural-generated housing needs*' are the housing needs of people who have long standing existing and immediate family ties or occupations which are functionally related to the rural areas of the County. These are specifically defined as follows:

- Members of farming families who are actively involved in the family farm which is located within rural Fingal as defined in Objective SPQHO80 and Chapter 14 Development Management Standards.
- Persons who have close family ties to the Fingal rural community as defined in Table 3.5 paragraph (i)
- Persons who have been in long term employment, which is related to, and supportive of, the rural community as defined in Table 3.5 paragraph (ii) and where the employment is dependent on the residence of the person within the rural community.
- Persons who are a member of a rural-located family, who are considered because of exceptional and demonstrated health reasons to have a need to reside beside their family home in the rural area as defined in Table 3.5 paragraph (iii).

- Persons who are 'a bona fide' applicant, as defined in Table 3.5 paragraph (iv), and who have a demonstrated commitment to set up a rural-related business and who may not already live in the area, nor have family connections there, or be engaged in particular employment or business classified with the local needs criteria. The applicant must have a clearly demonstrated need to live in the rural area to ensure the functioning of the business.

7.2.7. With respect to proposals for new dwellings by individuals who are not actively engaged in farming, I would draw the Board's attention to Section 3.5.15.5 of the Development Plan and, in particular, to Objective SPQHO81 which states that new rural dwellings will be permissible on lands zoned as 'RU' provided the applicant meets the criteria set out in Table 3.5: '*Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing*' which can be summarised as follows:

- i. One member of a rural family who is considered to have a need to reside close to their family home by reason of close family ties, and where a new rural dwelling has not already been granted planning permission to a family member by reason of close family ties since 19th October, 1999. The applicant for planning permission for a house on the basis of close family ties shall be required to provide documentary evidence that:
 - S/he is a close member of the family of the owners of the family home.
 - S/he has lived in the family home identified on the application or within the locality of the family home for at least fifteen years.
- ii. A person who has been in employment in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community/economy for fifteen years prior to the application for planning permission, and has not already been granted planning permission for a new rural dwelling since the 19th October 1999. Documentary evidence of such employment is required.
- iii. A person who is an immediate member of a rural family who has not been granted permission for a rural dwelling, since the 19th October, 1999, and is considered to have a need to reside adjacent to the family home by reason of

that person's exceptional health circumstances. The application for a rural dwelling must be supported by two sworn affidavits from relevant and qualified professionals, with at least one from a registered medical practitioner. A qualified representative of an organisation which represents or supports persons with a medical condition or disability may supply the other.

- iv. A 'bona fide' applicant who may not already live in the area, nor have family connections there or be engaged in particular employment or business classified with the local needs criteria.

7.2.8. Given that the proposed development site is located on lands zoned as 'RU' in the Development Plan, there would seem to be a reasonable expectation that an applicant will be required to demonstrate a '*genuine rural generated housing need*' with a view to obtaining planning permission. Moreover, the rural housing policy of the Development Plan is underpinned by the requirement to demonstrable an economic or social need to live in an '*area under strong urban influence*' in line with the provisions of the NPF and RSES. In this regard, it is apparent from the submitted particulars that the applicant has sought to rely on his residency at various addresses in the Rush area for in excess of 18 No. years as a basis on which to support his compliance with the county rural settlement strategy. However, difficulties arise when cognisance is taken of the applicant's stated ownership of both his current and previous places of residence.

7.2.9. The '*Sustainable Rural Housing, Guidelines for Planning Authorities*' state that in facilitating housing intended to meet rural-generated needs eligible persons can include those working full-time or part-time in rural areas or persons who are an '*intrinsic part of the rural community*' which are defined as follows:

'Such persons will normally have spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first homes near their family place of residence.'

(For the purposes of clarity, I would advise the Board that Circular letter PL 2/2017: *'Sustainable Rural Housing Guidelines for Planning Authorities 2005 – Local Needs Criteria in Development Plans'* clearly states that *the 'Sustainable Rural Housing, Guidelines for Planning Authorities, 2005'* remain in place and thus form the current 'default' position (as supported by the National Planning Framework) pending the publication of revised guidance by the Department).

- 7.2.10. While I would accept that the applicant has established a long-term residency in the locality to the effect that he has links to the Rush area, I would have a number of concerns as regards accepting this as a basis for any 'rural-generated' housing need.
- 7.2.11. Firstly, it is evident from an analysis of the submitted particulars that the applicant first purchased a home in the area in 2004 with the address of that property located within the development boundary of the urban settlement of Rush Village. He subsequently relocated to another property within the development boundary of Rush in 2010 where he resided until 2019. Therefore, between 2004 & 2019 it is clear that the applicant resided within the confines of Rush Village as opposed to its wider rural surrounds (by way of clarity, I can confirm to the Board that both the aforementioned residences were located within the settlement boundary of Rush as defined in the county development plans then applicable). By extension, the submitted details would only support the applicant's residence within the rural surrounds of Rush since 2019.
- 7.2.12. A second point of concern is the applicant's ownership of his current and previous places of residence. In assessing the merits of the proposal and whether the applicant could be held to satisfy the eligibility criteria in terms of having a demonstrable 'economic or social' housing need to reside at the location proposed as per Fingal's Rural Housing Policy (Section 2.7: *'Settlement Strategy: Rural Clusters and Rural Area'* of the Development Plan) and National Policy Objective No. 19 of the NPF, I would suggest that the following key factors require further consideration i.e. 'housing need' and any 'specific locational need' to reside on the lands in question
- 7.2.13. With respect to the issue of housing need, the applicant has indicated that he presently owns his current dwelling house and that he intends to sell this property

with a view to funding the proposed development. It is this decision to sell his current property in advance of having secured more permanent and suitable accommodation that will give rise to the applicant's housing need. In my opinion, it would be unsustainable to accept that the simple disposal of a property and the consequent generation of a 'housing need' could be held to amount to the establishment of an economic or social need to live in a rural area. Such a scenario would undermine key principles of the county settlement strategy and the '*Sustainable Rural Housing, Guidelines for Planning Authorities, 2005*' (a key aspect of the latter being to facilitate persons who are an intrinsic part of the rural community and are building their 'first homes').

- 7.2.14. In relation to any suggestion that the applicant has a specific locational need to reside at the subject site, given that he already resides as an owner / occupier on the same landholding as the development site, and noting that permission has been granted under PA Ref. No. F20A/0365 for the renovation and extension of his existing dwelling, I am not satisfied that the applicant has any overt need for a further dwelling at this location.
- 7.2.15. On the basis of the foregoing, and in light of National Policy Objective 19 of the NPF which, for rural areas under urban influence, seeks to facilitate the provision of single housing in the countryside based on the core consideration of a demonstrable economic or social need to live in a rural area while having regard to the viability of smaller towns and rural settlements, the proximity of the site to Rush town and other nearby settlements, the applicant's current housing circumstances, and notwithstanding the submissions on file indicating the applicant's links to the wider area, it is my opinion that the applicant does not come within the scope of either the economic or social housing need criteria set out in the overarching national guidelines or the 'rural-generated' housing need considerations of the Development Plan.
- 7.2.16. However, notwithstanding my analysis of the applicant's purported housing need, the situation is complicated somewhat by the specific policy provisions contained in the Development Plan as regards rural housing in the South Shore area (wherein the subject site is located). Section 3.5.15.8: '*South Shore Rush*' of the Plan provides for the settlement strategy for housing in the open countryside within the South Shore area to be 'more flexible' with Objective SPQHO92 stating that proposals for houses

within the South Shore area will be considered from persons who have been resident for a minimum of ten years within the South Shore area or within the development boundary of Rush or within one kilometre by road of either of these areas, subject to sustainable planning and consideration of climate change impacts (similar provisions are set out in Section 14.12.11 of the Plan).

- 7.2.17. It is the applicant's assertion that he has been resident within the South Shore Area and the Rush development boundary for a combined total of 18 No. years and, therefore, satisfies the eligibility requirements of Objective SPQHO92 for a rural dwelling house at the location proposed. More particularly, the case has been put forward that this objective does not place any restriction or prohibition on eligible persons who may already own their place of residence.
- 7.2.18. Having reviewed the submitted particulars, I would accept that the applicant satisfies the residency qualifying criteria set out in Objective SPQHO92 and that this policy objective is intended to be interpreted more flexibly than the wider rural housing provisions of the Plan given the overall residential character of the South Shore area. However, I would suggest that although this objective expands on Table 3.5: '*Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing*' in allowing for consideration to be given to persons who may not otherwise meet the rural housing eligibility criteria (e.g. those residing within the Rush development boundary), it is nevertheless subject to the caveat that the assessment of any such proposals must take account of sustainable planning and climate change considerations. In this regard, I am unconvinced that any reasonable application of Objective SPQHO92 would provide for the discounting of an applicant's housing circumstances, including their ownership of a place of residence, when assessing the appropriateness of a particular housing proposal.
- 7.2.19. Considering that the South Shore area continues to be an '*area under strong urban influence*', in my opinion, it is only reasonable to determine that it remains incumbent on an applicant to demonstrate an economic or social housing need for a new dwelling so as to ensure the sustainable planning and proper development of the area. Furthermore, I would be of the view that Section 3.5.15.8 & Objective SPQHO92 are essentially subservient to the preceding provisions of the Development Plan (including Section 3.5.15: '*Housing in Rural Fingal*') which reiterate that both the NPF and RSES seek to ensure that in areas under urban

influence the provision of single houses in the open countryside will be based on the core consideration of a demonstrable economic or social need. To interpret Section 3.5.15.8 of the Plan in the manner suggested by the applicant by discounting home ownership would seriously undermine the rural settlement strategy would also be contrary to regional and national guidance. Accordingly, I would refer the Board to my earlier assessment that the applicant does not come within the scope of either the economic or social housing need criteria set out in the Development Plan or the overarching guidelines.

7.3. Other Issues:

7.3.1. *Implications for the Future Development of the Wider Landholding:*

The proposed development site comprises part of a generally flat agricultural field located to the rear of existing housing as well as an associated access track extending from Channel Road and part of the curtilage of an adjacent dwelling house known as 'Ben Lomond'. Moreover, it forms part of a larger landholding that encompasses the wider field, the detached single storey property of 'Ben Lomond', and a series of sheds / outbuildings located to the rear of that dwelling.

7.3.2. Having regard to the site location within the South Shore area of Rush where applications for multi-unit schemes are not permitted as per Section 14.12.11: '*South Shore Rush*' of the Development Plan, and noting the applicable rural housing policy objectives, I would have reservations as regards the siting of the proposed dwelling house and its potential implications for the future development of the wider landholding. In my opinion, the overall design, layout and positioning of the proposal, including the provision of a 5.5m wide access roadway, would seem to suggest an intent to facilitate further development on the lands. On this basis, I would have concerns that the proposal would set an undesirable precedent for further such development while also constituting an uncoordinated and piecemeal approach to the development of the wider landholding which would be contrary to the orderly development of the area.

(The Board is advised that these concerns would represent a new issue in the assessment of the appeal).

7.4. Appropriate Assessment:

- 7.4.1. Having regard to the nature and scale of the development under consideration, the site location outside of any protected site, the nature of the receiving environment, the lack of any tangible connectivity to any European site, the availability of public services, and the proximity of the lands in question to the nearest European site, it is my opinion that no appropriate assessment issues arise and that the development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on any Natura 2000 site.

8.0 Recommendation

- 8.1. Having regard to the foregoing, I recommend that the decision of the Planning Authority be upheld in this instance and that permission be refused for the proposed development for the reasons and considerations set out below:

9.0 Reasons and Considerations

1. Having regard to:

- The location of the site within a rural area under strong urban influence in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government in April, 2005,
- National Policy Objective 19 of the National Planning Framework (February 2018) which for rural areas under urban influence seeks to facilitate the provision of single housing in the countryside based on the core consideration of demonstratable economic or social need to live in a rural area, having regard to the viability of smaller towns and rural settlements,
- The relevant provisions of the Fingal County Development Plan, 2023-2029 which provide for consideration to be given to the development of rural housing in areas under strong urban influence for those with a definable social or economic need to live in the open countryside,

- The documentation on the file, including the applicant's links to the area and his current & previous housing circumstances,

the Board is not satisfied, on the basis of the information submitted with the application and the appeal, that the applicant has a demonstrable economic or social need to live in this specific rural area. It is considered, therefore, that the applicant does not come within the scope of the housing need criteria, for a house at this location. In the absence of any identified locally based need for the house at this location, it is considered that the proposed development would result in a haphazard and unsustainable form of development, would contribute to the encroachment of random rural development in the area, would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure, and would be contrary to the settlement strategy and the relevant provisions relating to rural housing need as set out in the Fingal County Development Plan, 2023-2029. The proposed development would be contrary to the Ministerial Guidelines and to the over-arching national policy, having regard to the provisions of the Fingal County Development Plan, 2023-2029 and would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Robert Speer
Planning Inspector

19th April, 2023