



An
Bord
Pleanála

Inspector's Report ABP-314677-22

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| Development | Alterations to approved 2 storey 3 bedroom detached dwelling (Existing Planning Permission Reg. Ref. No. ABP-306798-20 and Fingal Co. Co. Ref. F19A/0594) and minor changes to boundary extents and shared access arrangements. |
| Location | Beal Na Blath, Rush Road, Hacketstown, Skerries, Co. Dublin. |
| Planning Authority | Fingal County Council |
| Planning Authority Reg. Ref. | F22A/0348 |
| Applicant(s) | Derek & Jackie Drumm |
| Type of Application | Permission |
| Planning Authority Decision | Grant subject to conditions |
| Type of Appeal | First Party v. Conditions |
| Appellant(s) | Derek & Jackie Drumm |
| 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 in the rural townland of Hacketstown, Co. Dublin, approximately 1.5km south of Skerries town centre and 600m east of the rail line, where it occupies a position on the western side of the R128 Regional (Rush) Road within a small rural settlement known as the Holmpatrick rural cluster. The surrounding pattern of development is characterised by a mix of semi-detached cottage-type dwellings and more recent two-storey detached houses with the built form extending in a linear format along both sides of the roadway.
- 1.2. The site itself has a stated site area of 0.155 hectares and forms part of the side garden area of an adjacent two-storey detached dwelling (known as Beal Na Blath) with a tennis / ball court, garden sheds, lawn areas, and some hard & soft landscaping occupying the location of the proposed dwelling. It is bounded by an agricultural track to the north (which used to access farmland to the west), the applicants' existing detached dwelling to the south, and by the public road to the east.

2.0 Proposed Development

- 2.1. The proposal involves the amendment of the development previously permitted under PA Ref. No. F19A/0594 / ABP Ref. No. ABP-306798-20 with the principal changes consisting of:
 - An amended house design of a reduced scale with a stated floor area of 185.82m² and an overall ridge height of 9.265m.
 - A revised site boundary that excludes an existing tree & raised bed along with part of the access driveway serving the existing dwelling house.
 - The recessing of the roadside boundary wall to provide for a 2m wide footpath along the entirety of the site frontage.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On 29th August, 2022 the Planning Authority issued a notification of a decision to grant permission for the proposed development, subject to 9 No. conditions. These conditions are generally of a standardised format and relate to issues including surface water drainage, landscaping, construction management, and development contributions, however, the following conditions are of relevance in the context of the subject appeal:

3.1.2. Condition No. 2:

- i. Prior to the dwelling being occupied the works on the path and the wall must be completed. The work is to be carried out in accordance with Fingal County Council taken in charge standards. The applicant is to agree the full construction details of the new path and re-constructed wall with the Area Engineer Operations prior to construction. A full 2m width construction is required not an additional strip to make up a 2m width path.
- ii. No objects, structures or landscaping shall be placed or installed within the visibility triangle exceeding a height of 900mm; which would interfere or obstruct (or could obstruct over time) the required visibility envelopes.
- iii. The vehicular entry-splay (i.e. the paved area lying between the proposed entrance gate and the edge of road carriageway) shall be constructed in a bound road material or other suitable material to a detail approved by the Planning Authority.
- iv. The gradient of the access shall not exceed 2.5% over the last 6 metres of its approach to the public road.
- v. All stormwater shall be disposed of to soakpits or drains within the site and shall not discharge onto the public road.

- vi. All underground or overhead services and poles to be relocated, as may be necessary, to a suitable location adjacent to the new boundary at the developer's expense.
- vii. All the above works shall be carried out at the Developer's expense according to the Specification and Conditions of Fingal County Council.

Reason: In the interest of orderly development and traffic safety.

3.1.3. Condition No. 5:

The use of the structure (when completed) as a dwelling shall be restricted to use by the applicant and/or members of the immediate family for a minimum period of 7 years from the date of occupancy by the Applicant. The Planning Authority will however consent to any sale of the property by a lending institution in exercise of its powers as mortgagee.

Reason: In the interest of the proper planning and development of the area, regard being had to the policies and objectives of the Development Plan in relation to rural development, including the Council's Rural Housing Policy.

3.1.4. Condition No. 6:

Prior to commencement of development, the Applicant or other person with an interest in the land to which the application relates, shall enter into an agreement in writing with the Planning Authority in accordance with the requirements of Section 96 of the Planning and Development Act 2000 as amended, unless an Exemption Certificate shall have been applied for and been granted under Section 97 of the Act, as amended.

Reason: To comply with the Requirements of Part V of the Planning and Development Act 2000 as amended and to comply with the requirements of the housing strategy in the Development Plan of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports:

Details the site location, planning history, and the applicable policy considerations before analysing the proposal in the context of the development previously permitted

under PA Ref. No. F19A/0594 / ABP Ref. No. ABP-306798-20. It subsequently concluded that the revisions proposed, including the reduction in the overall size and scale of the proposed dwelling, were acceptable in principle having regard to the terms and conditions of the parent permission, particularly as broader design of the proposal was similar to that of the development previously permitted. Therefore, a grant of permission was recommended, subject to conditions.

3.2.2. Other Technical Reports:

Water Services: No objection, subject to conditions.

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. F19A/0594 / ABP Ref. No. ABP-306798-20. Was granted on appeal on 3rd June, 2020 permitting Derek and Jackie Drumm permission for the sub-division of existing garden and the construction of a detached two-storey three bedroomed dwelling of a total area 250m² with shared vehicular and pedestrian access via existing access from the Rush Road and all associated site works and boundary treatment on site of circa 0.17 hectares.
- 4.1.2. PA Ref. No. F02B/0011. Was granted on 28th March, 2002 permitting Mrs. J. Drumm permission for the demolition of a domestic garage and the construction of a 2-storey extension to the side, single storey extension to the rear and internal alterations.

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. They also aim to strengthen rural villages and towns. Notably, the proposed development site is located in an ‘*Area under Strong Urban Influence*’ as indicatively identified by the Guidelines.

5.2. Fingal County Development Plan, 2023-2029:

5.2.1. *Land Use Zoning:*

The proposed development site is located in an area zoned as ‘*RC - Rural Cluster*’ with the stated land use zoning objective to ‘*Provide for small scale infill development serving local needs while maintaining the rural nature of the cluster*’.

Objective Vision: Provide a viable alternative to settlement in the open countryside, and support small-scale infill development by providing the rural community with an opportunity to choose more rural-style housing than is provided within the Rural Villages, and by facilitating the development of small scale and home-based enterprise among members of the rural community.

5.2.2. *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.

(The proposed development site is located within the Holmpatrick Rural Cluster).

Policy CSP47: Rural Clusters:

Promote appropriate sustainable growth of the Rural Clusters balanced with carefully controlled residential development in the countryside.

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 3.5.11: Quality of Residential Development

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.

Section 3.5.15.2: Rural Clusters:

Policy SPQHP54: Rural Clusters:

Permit only persons with a rural-generated housing need, as defined within this section of the Plan, and as set out in Chapter

14 Development Management Standards, planning permission for a house within areas of the County zoned Rural Cluster.

Obj. SPQHO65: Rural Clusters:

Encourage consolidation of rural housing within existing Rural Clusters which will cater for rural generated housing demand, as an alternative to housing in the open countryside, and encourage the reuse of existing buildings within the cluster over any new development.

Obj. SPQHO67: Character and Role of the Rural Cluster:

Permit only development within the Rural Clusters which has regard to the existing character and role of the cluster within the wider rural area, with particular care being taken that clusters do not compete with villages in the services they provide or the role and function they play within their rural area.

Obj. SPQHO68: Appropriate Development within Rural Clusters:

Ensure that proposals for new dwellings do not compromise the development potential of adjoining sites by means of on-site layout and house design and both vehicular and pedestrian access. All sites must provide sustainable drainage infrastructure.

Obj. SPQHO69: Vehicular Entrances:

Minimise the number of new entrances to sites within a rural cluster with a preference for sharing accesses with existing dwellings or using existing entrances. New entrances will only be considered where the potential for sharing is not possible. Any removal of hedgerows, trees and walls or other distinctive boundary treatment required to accommodate sight lines must be limited in extent and must be replaced with the same type of boundary. The use of native species for replacement planting shall be used where appropriate.

Chapter 9: Green Infrastructure and Natural Heritage:

Section 9.6.14: *Landscape Character Assessment*

Section 9.6.15: *Views and Prospects:*

Policy GINHP26: Preservation of Views and Prospects:

Preserve views and prospects and the amenities of places and features of natural beauty or interest including those located within and outside the County.

Obj. GINHO60: Protection of Views and Prospects:

Protect views and prospects that contribute to the character of the landscape, particularly those identified in the Development Plan, from inappropriate development.

Section 9.6.17: *High Amenity Zoning:*

Policy GINHP28: Protection of High Amenity Areas:

Protect High Amenity areas from inappropriate development and reinforce their character, distinctiveness and sense of place.

Obj. GINHO67: Development and High Amenity Areas:

Ensure that development reflects and reinforces the distinctiveness and sense of place of High Amenity areas, including the retention of important features or characteristics, taking into account the various elements which contribute to its distinctiveness such as geology and landform, habitats, scenic quality, settlement pattern, historic heritage, local vernacular heritage, land-use and tranquillity.

Chapter 14: Development Management Standards:

Section 14.12: *Rural Fingal:*

Section 14.12.1: *Design Criteria for Rural Villages and Rural Clusters*

Section 14.12.6: *Development in Rural Clusters:*

Applications for dwelling units within the County's Rural Clusters will be permitted to members of the Fingal Rural Community who can demonstrate a rural generated housing need defined as either:

- Persons currently living and who have lived continuously for the past ten years or have previously lived for a minimum of ten continuous years, or
- Persons working continuously for the past ten years,

Within areas of the County currently zoned rural. These areas are zoned Rural Village (RV), Rural Cluster (RC), Rural (RU), Greenbelt (GB), or High Amenity (HA).

Applications for development shall demonstrate compliance with the drainage and design standards required for on-site water-water treatment systems set out under Section 14.20.2 Rural Housing – Wastewater Treatment where a connection to public waste-water infrastructure is not available. Where a connection to public wastewater infrastructure is available, the overall site area shall not be less than 0.125 hectares.

Section 14.17: *Connectivity and Movement*

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 Loughshinny Coast Proposed Natural Heritage Area (Site Code: 002000), approximately 1Km east of the site.
- The Skerries Islands Special Protection Area (Site Code: 004122), approximately 1.1km northeast of the site.
- The Skerries Islands Natural Heritage Area (Site Code: 001218), approximately 1.1km northeast of the site.
- The Rockabill to Dalkey Island Special Area of Conservation (Site Code: 003000), approximately 2.4km east of the site.
- The Rockabill Special Protection Area: (Site Code: 004014), approximately 3km east-northeast 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 rural cluster, 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

- Condition Nos. 2, 5 & 6 are unnecessary and unreasonable given the fact that the proposed development consists of the change of design of a dwelling house for which permission has already been granted on appeal (PA Ref. No. F19A/0594 / ABP Ref. No. ABP-306798-20) without the subjection conditions attached and where planning policy or circumstances have not changed in the interim period. The Planning Authority has exceeded its statutory role by attaching these conditions having regard to the earlier decision of the Board.
- With respect to Condition No. 2 as imposed by the Planning Authority, this is a re-worded version of Condition No. 5 of the Board's Decision to grant permission for ABP Ref. No. ABP-306798-20 which states the following:

'Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority details for the setting back of the front boundary within the full extent of the land holding frontage along the R128. These works shall also provide for the widening of the public footpath to a minimum of two metres and shall be set out as provided for on Drawing Number D-1185-15 submitted to An Bord Pleanála with the appeal documentation on the 4th day of March, 2020. The cost of these works shall be fully borne by the developer and at no cost to the planning authority.

Reason: In the interests of orderly development and traffic safety'.

The details of the works required by Condition No. 5 of ABP Ref. No. ABP-306798-20 have been set out in Drg. No. D1185-A3-15 of the subject

application and it is of relevance to note that the Transportation Dept. of the Local Authority has not objected to the completion of the proposed development in accordance with these works (which involve the setting back of the boundary wall and the widening of the footpath).

However, concerns arise that the wording of Condition No. 2 by the Planning Authority (*“A full 2m width construction is required not an additional strip to make up a 2m width path”*) requires the unnecessary removal of a perfectly good public footpath. The Board’s condition only required that the footpath be *“widened to a minimum width of 2 metres”*. While the applicants accept that any such widening must result in a smooth surface over the full width of the pathway, it is considered unnecessary to remove the existing footpath to achieve such a result.

The appeal against Condition No. 2 is thus based on the following grounds:

- It includes an inappropriate and unnecessary level of detail that can be made subject to agreement with the planning authority prior to commencement of development;
- It would result in the creation of avoidable concrete waste contrary to Government policy on the circular economy; and
- It breaches the principles in the Development Management Guidelines that conditions attached to planning permission must be ‘necessary’.

Therefore, Condition No. 2 should be removed and replaced with the wording attached to PA Ref. No. F19A/0594 / ABP Ref. No. ABP-306798-20).

Alternatively, the sentence stating that *“A full 2m width construction is required and not an additional strip to make up a 2m width path”* should be removed from the condition.

- In relation to Condition No. 5, the inclusion of this occupancy condition is inappropriate given the conditions attached to the parent grant of planning permission. The site is located within the Holmpatrick Rural Cluster as defined in the Development Plan and the reporting inspector referenced the following objectives in their assessment of ABP Ref. No. ABP-306798-20:

- RF19: *'Encourage consolidation of rural housing with an existing Rural Clusters which will cater for rural generated housing demand, as an alternative to housing in the open countryside, and encourage the reuse of existing buildings within the cluster over any new development'.*
- RF20: *'Permit only persons with a rural generated housing need, as defined within this section of the Plan, planning permission for a house within a Rural Cluster where the site size is a minimum of 0.2 hectares for on-site treatment systems, and conforms to the drainage and design standards required by the council, and 0.125 hectares were connecting to a public sewer'.*

The issues of housing need and compliance with the applicable policy provisions pertaining to rural clusters were considered in detail by the previous inspector who concluded as follows:

'I consider that the proposed development, by reason of its adequate site size, would be compliant with objective RF20 of the Development Plan. It would adhere to the Development Plan requirements and respect the rural character of the cluster and I am satisfied that the current proposals adhere to the Rural Cluster policy of the Plan'.

No occupancy condition was attached to the grant of permission issued by the Board with the reasoning for its decision stating the following:

'Having regard to the location of the infill site within the identified Rural Cluster of Holmpatrick, within the 60 km/h speed control zone, the satisfactory contemporary design and layout, the scale and siting of the house and the existing pattern of development within the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area'.

Therefore, it is clear from the foregoing that the Board did not consider it appropriate or necessary to attach an occupancy condition to the decision to grant permission. Having regard to the fact that ABP Ref. No. ABP-306798-20 remains capable of implementation and as the planning policy context has not changed (*N.B.* In this respect, I would caution the Board that the Fingal County Development Plan, 2023-2029 has since replaced the Fingal County Development Plan, 2017-2023) plus the fact that the development is smaller in size than that permitted, it is inappropriate to attach such a condition in contravention of the Board's earlier decision.

- With regard to Condition No. 6, a Housing Agreement is not required for a development proposal of four or less houses. Furthermore, an exemption certificate was previously issued by the Planning Authority for the same site and to the same applicants under PA Ref. No. F19A/0594 (ABP Ref. No. ABP-306798-20) which remains valid in the context of the subject application.

While the report of the case planner has indicated that the reason for the inclusion of Condition No. 6 is that '*circumstances may have changed in the interim*', no indication has been given as to what any such changes may comprise: (i) the applicants are the same, (ii) the site is the same, and (iii) the legislation has not changed in the interim period.

This condition is not only unnecessary but could potentially create a situation where the planning permission could be null and void. The applicants are clearly not in a position to transfer land or to comply in any other way with the requirements of a housing agreement if the exemption certificate should not be granted. The Development Management Guidelines are clear on the fact that planning authorities should not attach conditions which are not 'reasonable' or which might have the effect of 'nullifying' the permission.

6.2. Planning Authority Response

- No further comments in respect of the development proposed.
- In the event of a grant of permission, the Board is requested to include Condition No. 9 as regards the imposition of a Section 48 development contribution.

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 local, regional and national policies, I conclude that the key issues raised by the appeal relate to the inclusion of Condition Nos. 2, 5 & 6. Furthermore, in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended, I am satisfied that this appeal should relate only to the merits of the aforementioned conditions.

7.2. **Condition No. 2:**

7.2.1. This condition effectively amounts to an amended and extended version of Condition No. 5 as attached to the Board's decision to grant permission for ABP Ref. No. ABP-306798-20, however, the pertinent issue raised in the grounds of appeal relates to the inclusion of a requirement whereby the necessary improvement works alongside the public road should provide for an entirely new 2m wide footpath construction as opposed to the provision of an additional strip to make up the 2m width.

7.2.2. By way of background, I would advise the Board that the first party appeal against the decision of the Planning Authority to refuse permission for PA Ref. No. F19A/0594 was accompanied by proposals for the widening of the existing public footpath bounding the site. In its subsequent decision to grant permission for that development under ABP Ref. No. ABP-306798-20, the Board attached a condition (Condition No. 5) which required the setting back of the entirety of the roadside site boundary and the widening of the public footpath to a minimum of 2m in line with the applicants' proposals detailed on Drg. No. D-1185-15 as received by the Board with the appeal documentation on the 4th day of March, 2020. The subject application has taken cognisance of the need to comply with Condition No. 5 of ABP Ref. No. ABP-306798-20 and has incorporated the requirements of that condition into the amended

development proposal by reference to Drg. No. D1185-A3-15 Rev. A: '*CONDITION 5: of An Bord Planning Decision 306798-20*' (received by the Planning Authority on 8th July, 2022 with the application particulars).

- 7.2.3. While the subject proposal would appear to satisfy the requirements of Condition No. 5 of ABP Ref. No. ABP-306798-20, the applicants have objected to a specific aspect of the footpath widening works sought by the Planning Authority, namely, that the works themselves should provide for an entirely new 2m wide footpath construction alongside the public road as opposed to the provision of an additional strip to make up the 2m width. In this respect, the applicants have questioned the logic of removing a perfectly good section of the public footpath with the implication being that it would be entirely feasible to maintain and extend the existing pavement up to the required 2m width (while acknowledging that any such construction must provide for a smooth finished surface over the full width of the pathway).
- 7.2.4. The requirement to provide for an entirely new 2m wide footpath construction along the roadside boundary derives from the report of the Transportation Planning Section of the Local Authority with the reasoning for the attachment of Condition No. 2 (which includes the aforementioned requirement) stating that it is in the interests of orderly development and traffic safety.
- 7.2.5. In my opinion, the requirement for the new pavement construction (as opposed to the retention & widening of the existing footpath) most likely stems from concerns related to pedestrian safety and the potential for any uneven surface treatment to give rise to a trip hazard. In effect, the likelihood is that the Local Authority is seeking to ensure that the new construction accords in full with all applicable standards so as to protect itself against any potential public liability claims.
- 7.2.6. On balance, I am inclined to conclude that the Local Authority is best positioned to determine whether it would be feasible to maintain and extend the existing footpath so as to achieve compliance with the 2m width requirement or if this should otherwise be achieved through an entirely new pavement construction. Accordingly, I would recommend that Condition No. 2 be amended to reflect the submission of Drg. No. D1185-A3-15 Rev. A: '*CONDITION 5: of An Bord Planning Decision 306798-20*' with the final construction details to be agreed with the Planning Authority in a manner similar to that required by Condition No. 5 of ABP Ref. No. ABP-306798-20.

7.3. Condition No. 5:

7.3.1. The proposed development is described in the public notices as involving the alteration of the development previously permitted on site under PA Ref. No. F19A/0594 / ABP Ref. No. ABP-306798-20. Accordingly, I am satisfied that the subject application can be reasonably described as amending an extant grant of permission. Therefore, given that the submitted proposal is intrinsically linked to the implementation of the grant of permission issued in respect of ABP Ref. No. ABP-306798-20, in my opinion, it would be inappropriate to revisit any issues of principle which were considered in the approval of the development already permitted on site. In this regard, I would advise the Board that it did not attach an occupancy condition to its earlier determination of ABP Ref. No. ABP-306798-20 and thus it would seem unreasonable to impose such a requirement on the subject proposal which simply aims to amend certain aspects of the design & layout of the permitted development. Consequently, I would recommend that Condition No. 5 as imposed by the Planning Authority be removed.

7.4. Condition No. 6:

7.4.1. This condition requires the applicants or other person with an interest in the land to which the application relates, to enter into an agreement in writing with the Planning Authority in accordance with the requirements of Section 96 of the Planning and Development Act, 2000, as amended, unless an Exemption Certificate has been applied for and granted under Section 97 of the Act.

7.4.2. In keeping with my assessment of the appropriateness of Condition No. 5, I would reiterate that the subject proposal involves the amendment of an extant grant of permission and is intrinsically linked to the implementation of that approval. By extension, it would be inappropriate to revisit any issues of principle which were considered in the approval of the development already permitted on site under ABP Ref. No. ABP-306798-20. In this respect, I note that PA Ref. No. F19A/0594 / ABP Ref. No. ABP-306798-20 was accompanied by an application for a Section 97 Certificate of Exemption and that the planning application itself was subsequently validated by the Planning Authority. Moreover, in its assessment of PA Ref. No. F19A/0594 (ABP Ref. No. ABP-306798-20), the report of the case planner notes that the applicants were granted a Section 97 Certificate of Exemption (Ref. No.

FS97/19/074) before stating that in such circumstances it would not be necessary to attach a planning condition relating to Part V in the event of a grant of permission. Permission was then granted on appeal for PA Ref. No. F19A/0594 / ABP Ref. No. ABP-306798-20 in the absence of any requirement for compliance with Part V of the Act.

7.4.3. Given that the subject proposal simply involves the amendment of the design & layout of the development already permitted under ABP Ref. No. ABP-306798-20, it would seem both unnecessary and unreasonable to impose a requirement as regards compliance with Part V of the Act and, therefore, I would recommend that Condition No. 6 be removed.

7.4.4. In any event, I would suggest that the Section 97 Certificate of Exemption (Ref. No. FS97/19/074) already issued to the same applicants in respect of broadly the same site serves to address the issues raised thereby negating any requirement for the imposition of Condition No. 6.

7.5. **Appropriate Assessment:**

7.5.1. Having regard to the minor nature and scale of the development under consideration, the site location within an existing serviced rural cluster outside of any protected site, the nature of the receiving environment, 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 nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the reasons and considerations set out below, directs Fingal County Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended:

to **AMEND** Condition No. 2 for the reasons and considerations set out hereunder:

2. Prior to commencement of development, the developer shall submit to, and agree in writing with, the planning authority details for the setting back of the front boundary within the full extent of the land holding frontage along the R128. These works shall also provide for the widening of the public footpath to a minimum of two metres and shall be set out as provided for on Drawing Number D1185-A3-15 Rev. A: 'CONDITION 5: of An Bord Planning Decision 306798-20' received by the Planning Authority on the 8th day of July, 2022. The cost of these works shall be fully borne by the developer and at no cost to the planning authority.

Reason: In the interests of orderly development and traffic safety.

Reasons and Considerations (1):

It is considered that the amendment of condition number 2 is necessary in the interests of orderly development and traffic safety and the proper planning and sustainable development of the area.

and to **REMOVE** Condition Nos. 5 & 6 for the reasons and considerations set out hereunder:

Reasons and Considerations (2):

Having regard to the nature of the proposed development, which involves the alteration of the development previously permitted on appeal under ABP Ref. No. ABP-306798-20 through the amendment of that extant grant of planning permission which is yet to be implemented, it is considered that the imposition of condition numbers 5 & 6 is not warranted and that the proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

Robert Speer
Planning Inspector

11th April, 2023