



An
Bord
Pleanála

Inspector's Report ABP-317720-23

Development	Construction of a 3-bedroom, detached house, stable and outhouse, new entrance onto the public road, a proprietary wastewater treatment system and all associated works.
Location	Ballustree, Rush, Co. Dublin
Planning Authority	Fingal County Council
Planning Authority Reg. Ref.	F23A/0270
Applicant	Niall Jones
Type of Application	Permission
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Date of Site Inspection	17 th September 2023
Inspector	Paul O'Brien

1.0 Site Location and Description

- 1.1 The subject site comprises of a stated area of 1.14 hectares of lands located to the north of a local road/ laneway and which is located to the east of the R128/ Skerries Road. These lands are located approximately 1.8 km to the north of Rush. The site is almost square in shape and is under grass and slopes upwards from south to north.
- 1.2 To the north east of the site is a Bord Gais facility and the lands on the other sides are similar to the subject site in that they are in agricultural use/ under grass, except for the lands to the east which contain a large glass house for horticultural uses. An agricultural type gate allows access to the lands and which is located towards the south west corner of the site.
- 1.3 Site boundary is primarily hedgerow with some fencing in place to augment the hedge. A timber post and rail fence is located to the south east corner, where part of the site has been removed to improve the access to the Bord Gais site.

2.0 Proposed Development

- 2.1 The proposed development consists of:
- A detached house, one and a half storey house with a stated floor area of 144 sq m providing for three bedrooms.
 - A stable block of three stables with a total of 41.1 sq m of floor area and an attached store room of 19 sq m. This block to be located adjacent to the northern boundary of the site.
 - A proprietary wastewater treatment system.
 - New vehicular entrance almost midway along the southern boundary of the site.
 - All associated site works.

Submitted in support of the application were:

- Supplementary Application Form for Planning Permission for a Dwelling in Rural Area (Fingal County Council requirement for such a house)
- Appendix A: Site Characterisation Form

- Site Suitability Assessment

3.0 Planning Authority Decision

3.1 Decision

The Planning Authority decided to refuse permission subject three reasons as follows:

1. 'The application site is within the 'RU' zoning objective under the Fingal County Development Plan 2023 – 2029, the site is also located in a 'Rural Area under Strong Urban Influence' in the 'Sustainable Rural Housing Guidelines for Planning Authorities' (DoEHLG, 2005). It is national policy in such areas under urban influence, as set out in National Policy Objective 19 of the National Planning Framework issued by the Department of Housing, Planning and Local Government in February 2018, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in such rural areas under urban influence. Having regard to the documentation submitted with the application, the applicant has not demonstrated compliance with the rural settlement strategy set out in the Fingal Development Plan 2023-2029 by virtue of not demonstrating a rural generated housing need in accordance with the criteria in Table 3.5 of the Development Plan. The proposed development would contravene materially the rural settlement strategy of the Fingal Development Plan 2023 - 2029 and would be contrary to the Ministerial Guidelines and to the over-arching national policy in the National Planning Framework. The proposed development would, therefore, be contrary to the proper planning and sustainable development in the area.
2. The proposed development is located within a landscape categorised as being of exceptional value and high sensitivity in the Fingal County Development Plan 2023-2029. The proposed development, by reason of its scale, form, and design, would be seriously injurious to the visual amenities of the highly sensitive coastal area, would constitute an unduly obtrusive and visually prominent feature in the landscape, would be out of character with the existing pattern of development in a rural location and would materially contravene Objectives GINHO59 and DMSO41 of the Fingal County Development Plan 2023 – 2029. The proposed

development would set an inappropriate precedent for other similar development and would, therefore, be contrary to the proper planning and sustainable development of the area.

3. The proposed development would endanger public safety by reason of traffic hazard having regard to the substandard access road serving the development in terms of its width, junction alignment with the R128, surface condition and inadequate sightlines, pedestrian and vehicular access. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.'

3.2 Planning Authority Reports

3.2.1 Planning Reports

The Planning Report reflects the decision to refuse permission. Insufficient information had been provided to demonstrate how the applicant would comply with the Fingal County Council Rural Housing Strategy. The design of house was considered to be inappropriate in an area with a highly sensitive coastal landscape designation, and which would be contrary to specific green infrastructure policies and objectives of the plan. The access to the site was also considered to be substandard and would give rise to a traffic hazard.

An important point to note within the Planning Report, is that no pre-planning consultation took place prior to the submission of the application.

3.2.2 Other Technical Reports

Transportation Planning Section: Refusal recommended.

Parks and Green Infrastructure Department: No objection subject to conditions.

Community Archaeologist/ Heritage Officer: No objection subject to condition.

Environmental Health Officer: No report received.

3.2.3 Prescribed Bodies Reports

Department of Housing, Local Government & Heritage: No objection subject to condition, in relation to archaeology.

Uisce Éireann: No objection subject to conditions.

3.2.4 **Objections/ Observations**

None received.

4.0 **Planning History**

There are no recent, relevant, valid applications on this site.

The Planning Authority provide a planning history in their report, though I note that these refer to decisions over 20 years ago/ several development plan back.

5.0 **Policy and Context**

5.1 **Development Plan**

- 5.1.1 Under the Fingal Development Plan 2023 – 2029, the subject site is zoned RU – Rural with a 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.’

The vision for the RU lands is as follows:

‘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.'

5.1.2 The Landscape Character Area is identified as 'Coastal' with an Exceptional Landscape Value and a High Landscape Sensitivity as per 'Table 9.3: Landscape Character Assessment Summary-Character, Value and Sensitivity'.

5.1.3 Section '3.5.15 Housing in Rural Fingal' outlines requirements for consideration in the development of rural housing in Fingal and states, 'Both the NPF and RSES, with reference to NPO 19 and RPO 4.80 respectively require that a distinction is made between areas under urban influence i.e., within the commuter catchment of cities and large centres of employment and ensure 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'. The following are relevant:

'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.'

5.1.4 The 'Fingal Rural Settlement Strategy Rural Generated Housing Need' is detailed under Section 3.5.15.3 of the plan and the following are relevant for those who wish to build in such a rural area:

'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.'

Table 3.5 provides the 'Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing'. The appellant states that he has lived in the area for 15 years and also wishes to start a rural based business here.

Therefore, the following from Table 3.5 are considered relevant:

'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.

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.'

The following summarised objectives are relevant:

SPQHO54 – Presume against opening new vehicular entrances unless necessary in terms of road safety or no alternative exists.

SPQHO55 – Preserve roadside hedges and trees.

SPQHO71 – Maximum number of houses under any of the rural zonings will be less any additional house granted to a family member since 19th October 1999.

SPQHO72 – Maximum of two incremental houses for those who meet the criteria in this part of the plan and in Chapter 14 – Development Management Standards, plus one house for those with exceptional health needs and one for exceptional farming needs.

SPQHO75 – Occupancy condition for seven years for rural zoned lands including RU zoning.

SPQHO90 – Ensure that entrances and boundary treatment are sensitive to their rural setting.

SPQHO91 – Retain hedgerows and other distinctive boundary treatments.

Chapter 9 – Green Infrastructure and Natural Heritage:

Objective GINHO56 – Require the preparation of visual impact assessment for highly sensitive areas.

Chapter 14 – Development Management Standards:

Objective DMSO41 – Design of houses in rural areas to have full regard to the setting and character of the area.

5.2 National Guidance

5.2.1 The Sustainable Rural Housing – Guidelines for Planning Authorities (April 2005) is relevant to this proposal as they set out the need for rural housing in appropriate/ sustainable locations.

5.2.2 National Planning Framework – Project Ireland 2040 recognises the importance of rural Ireland.

National Policy Objective 19 is relevant to this development:

‘Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements’.

5.3 **Natural Heritage Designations**

None.

5.4 **EIA Screening**

Having regard to the limited nature and scale of the development proposed which consists of the construction of a single house in a rural location, served by an on-site wastewater treatment and disposal system to current EPA standards, 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**

Niall Jones, the applicant, has appealed the decision of Fingal County Council to refuse permission for a house on this site in Ballustree, Rush, Co.Dublin. The following grounds of appeal are made:

- The appellant intends starting a thoroughbred horse breeding and horse trekking service on this site. This will support the appellant’s pension, which he lives off at present.
- The dormer is modest in size and is similar to other houses constructed in the area.
- The appellant needs to live here due to the nature of the proposed business.

- The road access from the R128 is considered to be safe and the appellant is willing to widen the laneway to front of the site.
- The decision to refuse permission was considered to be unfair and unbalanced.

In support of the appeal is a letter from Ballysax Manor Stud, Co. Kildare supporting the development of this site. It states that the appellant owns two mares and which reside at this stud at present. A second letter confirms that the appellant has been a client of McInerny Saunders – Chartered Accountant & Registered Auditors for over 20 years. The current address of the appellant is stated to be within the Rush area.

6.2 Planning Authority Response

- The submitted application and supporting documentation do not meet the requirements of the Fingal Development Plan 2023 – 2029, with particular reference to the rural settlement strategy.
- The development is located in an area with a highly sensitive landscape and the proposed development would endanger public safety by road hazard.

Request that the decision to refuse permission be upheld.

7.0 **Assessment**

7.1 The main issues that arise for assessment in relation to this appeal can be addressed under the following headings:

- Nature of the Development
- Rural Housing Policy
- Impact on Residential Amenity
- Impact on the Character of the Area
- Water Supply and Wastewater Treatment
- Access and Transportation
- Other Issues
- Appropriate Assessment Screening

7.2 **Nature of the Development**

The proposal is for permission for a house in a rural location in North County Dublin and also for the development of stables on these lands. A proprietary waste water treatment plant will be provided and a new vehicular entrance onto a public laneway which in turn accesses the R128/ Skerries Road.

7.3 Rural Housing Policy

7.3.1 Section 3.5.15.3 – ‘Fingal Rural Settlement Strategy Rural Generated Housing Need’ of the Fingal Development Plan 2023 - 2029, sets out the requirements for one-off rural housing in Fingal. I have outlined the requirements under Section 5.1 of my report. The Fingal Development Plan has full regard to National Policy Objective 19 and the Rural Housing Guidelines.

7.3.2 For RU lands, for getting a house on the basis of close family ties, the applicant needs to demonstrate in accordance with Table 3.5 that:

- he is a close member of the family of the owners of the family home.
- he has lived in the family home identified on the application or within the locality of the family home for at least fifteen years.

A supplementary application form for a dwelling in a rural area has been provided, but the information provided is not sufficient. The appellant states that he has lived in the area for most of his life (47 years) but no information is provided on this.

Normally confirmation of primary and secondary school attendance would demonstrate a significant portion of the required 15 years, bank/ tax details would also go some way to meeting the requirement. The letter from McInerney Saunders, only indicates that the appellant is a client of theirs for 20 years, no details of place of residency is given over this time. It is stated under Section 5 of the Supplementary form that he lived in Main Street, Rush for seven years, and in two locations in Swords for four years each. This is not adequate as no documentary evidence of this has been provided and residing in Swords does not demonstrate having lived in the immediate area of Rush.

7.3.3 I am therefore satisfied that that the appellant has not demonstrated that they comply with i of Table 3.5.

7.3.4 The appellant refers to the intention to develop a horse trekking and breeding business on these lands. Requirements are provided under item iv of Table 3.5. It is stated that the appellant owns two horses which are in County Kildare at present. The requirements here under this section of Table 3.5 are clear, and include the provision of a business plan and demonstrate a commitment to running the business from their home. The necessary documentation has not been provided and there is no indication that a business could run successfully here and require the development of a house to operate such a business.

7.3.5 I am therefore satisfied that that the appellant has not demonstrated that they comply with point iv of Table 3.5. The appellant therefore does not comply with the rural housing strategy as set out in the current development plan for the area. The appellant has provided very little evidence and supporting documentation, making it difficult for the Planning Authority to come to any other decision and I agree with their recommendation. I would suggest that some form of pre-planning consultation, even just to ascertain requirements, may have resulted in a more comprehensive application to be made. It is therefore recommended that permission be refused as the appellant has failed to demonstrate compliance with the Fingal Rural Housing Strategy.

7.4 Impact on Residential Amenity

7.4.1 The proposed house will not impact on any existing units in the area in terms of overshadowing/ loss of daylight or in terms of overlooking leading to a loss of privacy. Similarly, the proposed stables/ store will not impact on existing houses in the area. The nearest unit is to the north west, addressing the Skerries Road, but separation distances in excess of 100 m ensure the protection of residential amenity.

7.4.2 The proposed house provides for appropriate residential amenity in terms of room sizes and the site area is such that adequate private amenity space can be provided for.

7.5 Impact on the Character of the Area

7.5.1 The proposed house design is considered to be visually acceptable and is considered to be appropriate for a rural area. The house is located 28 m north of the laneway, which combined with appropriate landscaping would normally be sufficient to ensure its integration with the adjoining landscape.

7.5.2 The location of the site within a Coastal area with an Exceptional Landscape Value and a High Landscape Sensitivity, requires any development to have regard to these designations. No visual impact assessment or justification for the development has been provided. The appellant has not addressed the reason for refusal as issued by Fingal County Council and I again agree with the Planning Authority that the proposed development would have a negative impact on the character of the area. The potential need to remove hedgerows in order to widen the laneway would further impact on the character of the area. It is therefore considered that permission should be refused due to impact on the character of the area. I cannot agree that permitting the development may set a precedent, as each case would be assessed on its own merits.

7.6 **Water Supply and Wastewater Treatment**

7.6.1 Uisce Éireann have reported no objection to the proposed development in relation to the provision of a water supply to serve this development. No issues have been raised in relation to foul drainage.

7.6.2 It is proposed to install a unnamed secondary wastewater treatment system, with soil polishing filter and which will have capacity for 6 persons. The treatment system is located approx. 28 m to the south east of the house. Table 6.2 of the EPA 'Code of Practice - Domestic Waste Water Treatment Systems (Population Equivalent ≤ 10)' sets out minimum separation distances and the proposed development is compliant.

7.6.3 The site is located in an area identified with a 'Moderate' vulnerability classification in the GSI Groundwater maps and is located within an area defined "Locally Important (Lm)" Aquifer category, representing a Groundwater Protection Response of R1 under the EPA Code of Practice. There was no indication of ponding on the day of the site visit.

7.6.4 The trial hole had a depth of 2 m and the assessment submitted by the applicant indicates that the water table was not encountered within this depth with the soil found to consist of a mixture of topsoil over the first 0.4 m depth, gravelly clay/ gravel

boulders down to 1.0 m and a mix of shaley clay/ shale boulders over the remaining 1 m down to 2 m below ground level. The submitted site characterisation records a T-test value (Standard Method) of 64 min/ 25 indicating a good soakage. The submitted report indicates that three separated trial holes were provided.

7.6.5 A wastewater treatment system and polishing filter is to be provided to serve this house. All required separation distances to houses, structures and other treatment systems are complied with. Details of the proposed soil polishing filter is included in the site characterisation assessment.

7.6.6 In conclusion, from the submitted details in addition to the report of the Water Services Department, no concerns regarding the provision of a wastewater treatment system have been raised and the proposed development is unlikely to have a negative impact on the groundwater in the area or on watercourses subject to the provision of the wastewater treatment system as detailed in the application.

7.7 Access and Transportation

7.7.1 The Planning Authority and the Transportation Planning Section recommended that permission be refused due to the need to significantly upgrade the laneway as the current alignment and layout is unacceptable and an increase in traffic may give rise to a potential traffic hazard. It is reported that the laneway is in use serving the Gas Networks Ireland facility, agricultural lands and also provide pedestrian access to Drumanagh Fort and St. Catherine's beach.

7.7.2 The carriageway is of a poor quality and the width of the laneway is narrow. Whilst this may be acceptable for a car, combined with the other listed traffic sources, this is problematic. A solution, as proposed by the appellant, is to widen the carriageway. No details of this have been provided and the submitted site layout plan indicates that the existing hedgerow is to be retained. The widening of the road and the provision of a suitable access to the site would further adversely impact on the character of the area, as already reported on.

7.7.3 The junction with the R128/ Skerries Road is also substandard in terms of available sightlines and the quality of carriageway. The junction is not of a suitable quality for a mix of pedestrian and car-based movements. Permitting the proposed development would create an expectation significant upgrade works would be required here.

7.7.4 It is therefore considered that permission should be refused as the laneway serving the site is of a poor standard, would require significant upgrade works and the development would give rise to traffic hazard in the area.

7.8 **Other Issues**

7.8.1 The comments made in relation to archaeology are noted. In the event that permission was to be granted, suitable conditions could be included to appropriately address this.

7.8.2 The appellant has failed to adequately address the reasons for refusal. Three separate issues were listed and the Planning Authority report on the lack of supporting information. This is also a feature of the appeal, and the lack of supporting detail has not allowed the appellant to provide a suitable justification for this development. The issues were clearly outlined by the Planning Authority and through the supporting reports and each of these required addressing, which has not happened. The appeal only focused on the appellants requirement for a house but insufficient comment was made on the issue of impact of the development on the character of the area and on the access to the site.

7.9 **Appropriate Assessment Screening – Stage 1**

7.9.1 The subject site is located approximately 500 m to the west of the North Irish Sea SPA (Site Code 004236), 1.5 km to the west of the Rockabill to Dalkey SAC (site code 003000), and 2.6 km to the north of Rogerstown Estuary SAC (Site Code 000208).

7.9.2 The subject site is not hydrologically and/ or ecologically connected with any European/ Natura 2000 site. Having regard to the nature and scale of the proposed development and the provision of a wastewater treatment system combined with the separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the development would be likely to give rise to a significant effect individually or in combination with other plans or projects on any identified European site.

8.0 Recommendation

I recommend that planning permission be refused for the following reasons and considerations as set out below.

9.0 Reasons and Considerations

1. Having regard to the location of the site within 'Area Under Strong Urban Influence' issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Fingal Development Plan 2023 - 2029, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. The subject site is located within a landscape, Coastal, designated as of exceptional value and high sensitivity in the Fingal Development Plan 2023 – 2029. The proposed development through the construction of a house within this landscape would be visually obtrusive and would erode the character of the area to an unacceptable level. The proposed development would materially contravene Objectives GINHO59 and DMSO41 of the Fingal Development Plan 2023 – 2029. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

3. The proposed development is located along a local road/ laneway which is inadequate in width, alignment and structural conditions, and along which a new access is proposed to serve the site. Vehicular traffic exits/ enters the Skerries

Road/ R128 regional road at an inadequate junction in terms of layout/ surface treatment with inadequate sightlines for such a junction. The proposed development would, therefore, endanger public safety by reason of traffic hazard.

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.

Paul O'Brien
Senior Planning Inspector

18th September 2023