



An
Bord
Pleanála

Inspector's Report ABP 318464-23

Development

Retain a single storey family farm house located on the applicant's farm holding and all associated site development works. Permission to reclad the existing dwelling with white plastered blockwork and provision of slate roof to same.

Location

Ballymana Lane, Kiltipper, Dublin 24

Planning Authority

South Dublin County Council

Planning Authority Reg. Ref.

SD23A/0208

Applicant(s)

Aengus and Fiona Cullen

Type of Application

Retention and Permission

Planning Authority Decision

Refuse

Type of Appeal

First party

Appellant(s)

Aengus and Fiona Cullen

Observer(s)

None

Date of Site Inspection

9/3/2024

Inspector

Rosemarie McLaughlin

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1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Ballymana c 3 km southwest of Tallaght in an elevated rural area, on approximately the 225m contour line in the Dublin Mountains. The site is accessed off Ballymana Lane, a cul de sac, which is a narrow, steeply sloping lane, restricted in width, located off Kiltipper Road. The 2,416 sqm site outlined in red consists mainly of a farm access lane, running south off Ballymana Lane extending into a small broadly triangular shaped site where the structure to be retained and altered is located. The subject site provides expansive views towards the east and southeast. To the west, the land continues to rise to Knackannavea peak with an elevation of c. 401 metres.
- 1.2. The timber structure, the subject of the application to be retained and altered is located directly alongside the farm access lane. The site is not level and the building has levelling supports underneath the structure on the southern side. The floor plans illustrate two bedrooms, a farm office and an open plan living/kitchen. A small garden is located to the north of the dwelling and a shed is located to the north of the garden. Agricultural machinery is located to the south of the house as well as concrete blocks. Vehicles are parked along the lane.
- 1.3. The location of the development was identified in PA Ref. SD09/0347 (permission for shed) as an “area paved to accommodate bypass for farm machinery” and the location of the structure is c 1.9m from the boundary to the east. The opposite side of farm access lane banks upwards steeply to the west. Along the farm access lane are stored large precast concrete pipes.
- 1.4. The overall lands outlined in blue mainly to the south and southeast, incorporate land in the townland of Ballymaice to the south, c. 900 m southeast, located north of Ballymaice Lane which is a loop road off the N114. The lands to the north of Ballymaice Lane are arranged around a cluster of buildings outside the blue line, set back from the public road. A river traverses the landholding in an east-west direction.
- 1.5. The farm access lane leads south towards the applicants’ farmyard, two farm structures and silos and agricultural lands outlined in blue. The farmyard located on a plateau also contains a soils heap and skip. The steeply sloping hard surface access road between the house and sheds, becomes a track to the south of the

sheds to lands further south and that track appears to be in the process of being widened with soil heaps and an aggregate type of surface evident.

- 1.6. The pattern of development in the surrounding area towards the southern end of Ballymana Lane is predominantly agricultural hill land, detached houses close to the local road and farm buildings.

2.0 Proposed Development

- 2.1.1. This is an application for permission to retain a single storey family farm house located on the applicant's farm holding, along with all associated site development works; the development will be accessed via an existing roadway serving the existing farm, as previously permitted under Ref. SD09A/0347.
- 2.1.2. The building to be retained is 96 sqm and is illustrated in the application drawings as on the same footprint, height etc as the existing timber structure. Permission is sought to reclad the existing dwelling with white plastered blockwork and provision of slate roof to same. In addition to the plans, several reports and supporting documents accompany the application. The first named applicant has submitted he is a farmer and also has a seasonal agri-contracting business.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for the following three reasons.

1. The applicant has not demonstrated that they meet all of the exceptional circumstances criteria specified in Policy H19 Objective 1 of the South Dublin County Development Plan 2022 – 2028. Specifically, it is considered that the development would not be in keeping with the character of the mountain area, in material contravention of the sites HA-DM zoning, with the objective To protect and enhance the outstanding natural character of the Dublin Mountain Area. Furthermore, it is not considered that a genuine need for housing at the specific location chosen has been demonstrated sufficiently to set aside Policy H19 of the Development Plan. On this basis, the development

materially contravenes the sites zoning objective and retention of the development would be contrary to the proper planning and sustainable development of the area.

2. The applicant has not demonstrated compliance with all of the requirements of H23 Objective 1 of the South Dublin County Development Plan 2022 – 2028. In particular, it is not considered that the development for which retention is sought has been designed and sited to minimise impact on the landscape, given its exposed and elevated position, and its location on a substandard rural road. To grant retention for the development, in an elevated position within the Dublin Mountains High Amenity Zone, would set an undesirable precedent for similar development in the area and would intensify pressures on existing infrastructure in the area. The development would represent a haphazard form of development, as a result of its location on an un-serviced, substandard rural road. The development is therefore contrary to the proper planning and sustainable development of the area.
3. Having regard to the substandard width, the vertical and horizontal alignment of Ballymana Lane and the lack of safe passing opportunities, the development for which retention permission is sought would endanger public safety by reason of traffic hazard.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning report refers to the extensive planning history, the relevant planning policies and refused permission for the reasons outlined above. No third party observations were received by the planning authority.

3.2.2. Other Technical Reports

Roads (19/10/13): Recommended permission be refused for two reasons, relating to the general width of the Ballymana Lane and its poor vertical and horizontal alignment is such that two vehicles cannot pass each other safely and that the generation of additional traffic on a laneway substandard in width and alignment, without adequate facilities for pedestrians and vulnerable road users would endanger public safety by reason of a traffic hazard.

Water services (5/10/23): Recommend Additional Information in relation to Sustainable Urban Drainage Systems (SuDs).

Environmental Health (19/10/23): Acceptable subject to conditions.

Uisce Eireann (19/10/23): Recommend Additional Information seeking a report clarifying the proposed potable water supply.

4.0 Planning History

There is a substantial planning history on the subject site and on the lands outlined within the ownership of the applicant.

4.1. Relevant planning history relating to structure to be retained and for new location.

SD19A/0298/ ABP-306184-19: Permission refused by Board (28/4/2020), upholding decision of PA, to retain a single storey family farmhouse located on the applicants farm holding, accessed via an existing roadway serving the existing farm previously permitted under Ref. SD09A/0347. Permission sought to reclad the existing dwelling with white plastered blockwork and provision of slate roof. The Board refused permission for 3 no. reasons relating to the following:

- insufficient evidence to warrant a dwelling house at the rural location within the scope of the exceptional circumstances
- out of character with the surrounding pattern of development, would seriously injure the visual amenities of the area, would interfere with the character of the surrounding landscape
- traffic hazard

Note: The lands outlined in blue in ABP-306184-19 and the earlier planning histories are smaller than the current appeal which extends and includes lands on the north side of Ballymaice Lane.

SD18A/0038: Permission refused for construction of dormer bungalow, foul waste water treatment system and associated site works for 7 no. reasons. That proposal relates to a site southeast of the subject site within the blue line of the current application. It was not appealed.

SD16A/0199/ PL06S.247148: Permission refused by the Board (30/12/2016) upholding decision of PA, for retention of timber structure for use as farm office and veterinary store with family house accommodation, septic tank, and access to public road via existing roadway serving farm buildings for 3 no. reasons relating to planning policy (exceptional circumstances not met), visual impact, and traffic hazard.

SD16A/0068: Permission refused for retention of timber structure for use as farm office and veterinary store along with family farmhouse accommodation with septic tank, access via existing roadway serving existing farm buildings, to include completion of existing entrance to public road in accordance with planning permission granted under Reg. Ref. SD09A/0347, for 5 no. reasons.

SD15A/0120: Permission refused for the retention of timber structure for use as habitable accommodation with septic tank, access to public road via existing roadway serving farm buildings, to include completion of existing entrance to public road in accordance with planning granted under Reg Ref SD09A/0347, for 5 no. reasons.

SD13A/0010: Permission refused for dormer house, private garage, new entrance to public road, waste water treatment system, bored well and all ancillary works, for 4 no. reasons.

4.2. Relevant planning history within blue line

SD09A/0347: Permission was granted for construction of a farm shed 140m x 18m to include a slatted slurry tank, cattle pen, calving cubicles, silage slab, new access from Ballymana Lane, and site levelling works. The application indicated that the applicants family home at that time was southwest of the current landholding fronting Ballymana Lane.

The application illustrated that an existing well on the family landholding was the source of supply for water for the development.

SD16A/0305: Permission refused by PA to extend previously permitted agricultural shed SD09A/0347 for 4 no. reasons relating to an extension to an unauthorised development, visual impact, traffic hazard and environmental implications.

SD17A/0082: Permission refused by PA for retention of previously permitted agricultural shed SD09A/0347 that was rotated by 26 degrees on site, constructed on contour level 211m, agricultural feed stores with improvement works to front entrance and all associated site works for 8 no. reasons relating in the main to visually prominent and unsympathetic development in an area of outstanding natural character and amenity as part of the Dublin Mountains visible from the surrounding hinterland, public health, environmental implications, green infrastructure, traffic hazard, unauthorised structures/dwelling.

Enforcement: Enforcement Notice ENF S 7484 as stated on planning application form and live file in PA planning report.

5.0 Policy and Context

5.1. National Planning Framework (NPF)

- 5.1.1. NPO19 aims to ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence. In rural areas under urban influence, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area.

5.2. Sustainable Rural Housing Guidelines 2005

- 5.2.1. The guidelines require that planning authorities on drawing up County Development Plans make a distinction between urban generated and rural generated housing needs. The relevant provisions of the Guidelines are repeated in the CDP and outlined below.

5.3. Development Plan

The South Dublin County Development Plan 2022-2028 applies (CDP). The appeal site is located on Map 11 in an area zoned as Objective HA-DM, “To protect and enhance the outstanding natural character and amenity of the Dublin Mountains areas”. Open For Consideration includes, “ Residential (In accordance with Council policy for residential development in rural areas, Not permitted above 350m contour)”. A small section of the site is zoned RU‘ To protect and improve rural

amenity and to provide for the development of agriculture at the northern section of the farm access lane adjacent to Ballymana Lane.

There are a number of relevant CDP policies and the key relevant policies in relation to the appeal are summarised below.

Section 6.9 provides a detailed Rural Housing Strategy where the protection of rural landscapes and of high amenity and environmentally sensitive areas is a priority of the CDP. The entire rural area of South Dublin is under strong urban influence. The CDP should 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.

Section 6.9.1 includes that In line with the Sustainable Rural Housing Guidelines, the Council will consider rural housing for persons with demonstrated exceptional health circumstances, supported by relevant documentation from a registered medical practitioner and a disability organisation, where a person is required to live close to family support or in a particular environment.

Policy H16: Management of Single Dwellings in Rural Areas Restrict the spread of urban generated dwellings in the Rural “RU”, Dublin Mountain ‘HA-DM’, ...zones..

Policy H17: Rural Housing Policy and Local Need Criteria Consider rural housing for persons who are “an intrinsic part of the rural community” or “working full-time or part-time in rural areas” as described under Section 3.2.3 (Rural generated housing) of the Sustainable Rural Housing Guidelines DEHLG (2005), Circular SP 5 / 08 Rural Housing Policies and PL 2 / 2017 Local Need Criteria in Development Plans: Conformity with Articles 43 and 56 (Freedom of Establishment and Free Movement of Capital) of the European Community Treaty.

Policy H19: Rural Housing in HA – Dublin Mountains Zone New or replacement dwellings within areas designated Zoning Objective ‘HA-DM’ (to protect and enhance the outstanding natural character of the Dublin Mountains Area) will only be considered in exceptional circumstances.

H19 Objective 1: To consider new or replacement dwellings within areas designated with Zoning Objective ‘HA-Dublin Mountains’in the following exceptional circumstances where all of the criteria below are met:

- ⇒ The applicant is a native of the area; and
- ⇒ The applicant can demonstrate a genuine need for housing in that particular area; and
- ⇒ The development is related directly to the area's amenity potential or to its use for agriculture, mountain or hill farming; and
- ⇒ The development would not prejudice the environmental capacity of the area, and that it would be in keeping with the character of the mountain area.

Policy H22: Occupancy Condition

Policy H23: Rural Housing and Extension Design

H23 Objective 1: Ensure that all new rural housing and extensions within areas designated within Zoning Objectives Rural (RU), Dublin Mountain (HA-DM),...;

- ⇒ Is designed and sited to minimise impact on the landscape including views and prospects of natural beauty or interest or on the amenities of places and features of natural beauty or interest including natural and built heritage features; and
- ⇒ Will not have a negative impact on the environment including flora, fauna,.; and
- ⇒ Is designed and sited to minimise impact on the site's natural contours and natural drainage features; and
- ⇒ Retains and reinstates traditional roadside and field boundaries; and
- ⇒ Is designed and sited to circumvent the need for intrusive engineered solutions..; and
- ⇒ Would comply with the EPA's Code of Practice for Domestic Wastewater Treatment Systems.....; and
- ⇒ Would not create or exacerbate ribbon or haphazard forms of development.

Policy NCBH1: Overarching Protect, conserve and enhance the County's natural, cultural and built heritage,...

Policy NCBH1 Objective 2: To support the objectives and actions of the County Heritage Plan and the County Biodiversity Action Planand to take full cognisance of the County's Landscape Character Assessment....

Policy NCBH6: Dublin Mountains Protect and enhance the visual, environmental, ecological, geological, archaeological, recreational and amenity value of the Dublin Mountains, as a key element of the County's Green Infrastructure network.

NCBH6 Objective 1: To support the Dublin Mountains Partnershiprecognising and protecting the ecological, geological, archaeological, and cultural heritage of the Mountain landscape.

NCBH6 Objective 2: To restrict development within areas designated with Zoning Objective 'HADM' (To protect and enhance the outstanding natural character of the Dublin Mountains Area) and to ensure that new development: does not significantly impact on sensitive habitats, species, or ecosystem services; is related to the area's amenity potential or to its use for agriculture; mountain or hill farming; and is designed and sited to minimise environmental and visual impacts.

NCBH6 Objective 5: To ensure that any development above the 350-metre contour in the Dublin Mountains will seek to protect the open natural character....

Chapter 12 sets out the detailed development management standards that apply to rural housing. **Section 12.6.9 Rural Housing:** Applicants must not have already been granted planning permission for a new rural dwelling and must clearly demonstrate compliance with the above through the submission of the following information:

- ⇒ Documentary evidence to show how the applicant complies with rural housing policy;
- ⇒ A map showing all existing family-owned property and lands;
- ⇒ A rationale as to why a particular site has been chosen for development;
- ⇒ A strong justification in relation to the need for an additional dwelling in the rural area;
- ⇒ How their existing or proposed business contributes to and enhances the rural area supported by evidence of investment;
- ⇒ A rationale clearly detailing why a family flat is not a suitable alternative;
- ⇒ A site suitability report in relation to waste treatment (See further detail below).

Note: The above list is non-exhaustive, and each application will be examined on a case-by-case basis.

Rural Housing Design: A comprehensive site analysis and character appraisal should be submitted with all applications for houses and extensions in rural and high amenity zones . The analysis and appraisal should provide a rationale for the design and siting of the proposed development including form, building finishes, height, and massing based on the local and natural context. Driveway and parking areas provide sufficient area for car parking and turning on site and should follow the natural slope and contours of the site. Several further criteria are provided.

Landscape Character Assessment of South Dublin County: Appendix 9 provides the character landscape assessment. The site is located in the Athgoe and Saggart Hills on Map RH Fig.21. Fig. 38 Landscape character types and sensitivity places the appeal site on the border of Medium-High (foothills) and High Hills/Mountain (scale does not allow precise location).

Ballymaice Road and the N114 (Ballinascorney Road) to the southeast of the appeal site contain protected views

Policy NCBH15: Views and Prospects Preserve Views and Prospects ..

NCBH15 Objective 1: To protect, preserve and improve Views and Prospects of special amenity, historic or cultural value or interest includingmountain, hill, coastal, upland and urban views and prospects that are visible from prominent public places and to prevent development which would impede or interfere with Views and / or Prospects.

NCBH15 Objective 2: To require a Landscape / Visual Assessment to accompany all planning applications for significant proposals that are likely to affect views and prospects.

5.4. **Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the Glenasmole Valley SAC (Site Code: 001209) located approximately 1.1km to the south east of the subject site. The Wicklow Mountains SAC (Site Code: 00212) is located approximately 2 km to the south east.

5.5. EIA Screening

- 5.6. Having regard to the nature and modest scale of the proposed development, its location and the likely emissions therefrom it is possible to conclude that the proposed development is not likely to give rise to significant environmental impacts and the requirement for submission of an EIAR and carrying out of an EIA may be set aside at a preliminary stage.

6.0 The Appeal

6.1. Grounds of Appeal

- The grounds of appeal are accompanied by 23 supporting documents. Mr Cullen was raised in his parental family home near the present appeal site. The application site represents a banal parcel of insignificant farmland on an overall site of 34.3 ha which is farmed by the applicant and served by the same local road and vehicular access. Mr Cullen also leases other land.
- Large sections of the previous PA planning report, inspectors reports associated with the planning history, reasons for refusal etc are repeated.
- It is submitted the development accords with Sustainable Development Strategy for Ireland 1997 and the NPF. The NPF promotes new rural housing and NPO 19 and sections of the sustainable rural housing guidelines are repeated. Section 3.2.3 of the guidelines where the definition of persons who are an intrinsic part of the rural community are provided, examples include farmers their sons and daughters. The rural development programme Ireland 2014 -2020 and the rural development priorities are provided in detail.
- New housing is open for consideration, and it is lawful for the board to permit retention of this development. The relevant housing and other policies are stated. The subject land is on the periphery of a high amenity area with the northern section of this zone governed by the RU zoning to protect and improve rural amenity and to provide for the development of agriculture.

- The landscape character in appendix 9 of the CDP is referred to. The appeal provides a map indicating that the location of the subject site is designated as urban fringe /Peri urban on map RH.
- The land can be used for agricultural activities per Section 4 of the Planning and Development Act 2000, regardless of whether planning permission is issued for the retention of the subject house. It is imperative for this agricultural business to operate on a commercial footing that a house be erected to secure and protect valuable items and to facilitate animal husbandry. The lack of onsite accommodation would make it virtually impossible to succeed at its present scale and would require multiple trips to and from a house elsewhere. The location of the house was acceptable in the ABP ref. 247148 to the inspector. There are no AA or EIA issues. Previous refusals did not relate to wastewater and the planning authority position where additional information is required can be met by condition. The applicant is willing to accept a sterilisation condition. The historic 6 inch map records 2 buildings on the overall holding and probably one was a house.
- In relation to the first reason for refusal the appellant provides details of the National Spatial Strategy which was in force when the CDP 2016 was adopted and informed the Board's approach in the last refusal. The Board is requested to accept that national planning policy aims to accommodate applicants with social or occupational links to a particular rural area consistent with the national spatial strategy and the sustainable rural housing guide lands. The criteria should not be applied so strictly as to end up with rigid development control system preventing eligible applicants from rural housing.
- Although Mr Cullen has been living in an unauthorised dwelling for over 9 years this does not disentitle him from securing permission and planning appeal ABP Ref. 228619 is referred to. Details have been provided illustrating the applicant is a native resident of the area and therefore he satisfies the residency element of the rural housing policy. Additionally, 16 documents have been provided indicating Mr. Cullen is in agricultural employment on the landholding. The board is requested to acknowledge this large scale farm enterprise cannot succeed without onsite accommodation consistent with other ABP decisions. There is no restriction as to the size of a farm.

- Use of precedent in a decision is based on a weak argument. Exceptional circumstances have been met under policy H19 and is a significant change in policy to the earlier plan and it is not open to opine the exceptional circumstances do not exist. Several legal cases are quoted relating to the environmental contract of a CDP and the appeal states it is not lawful to expand the exceptional circumstances.
- The view of the Inspector on the previous appeal and the unauthorised farm buildings is at variance with established case law. The Board should recognise unauthorised but immune development in their assessment.
- The Board considered the 4 criteria in the previous CDP were met and these have been carried forward to policy H19 and the Board should reach the same conclusion which meets the exceptional circumstances test.
- It would be unsafe legally for the Board to endorse the PA in relation to the adverse visual impact as this has not been explained. The site is not particularly elevated relative to land to the south and is below the 350 m contour noted in the CDP. Owing to the CDP policies, the issue of precedent does not arise. The pattern of development in the area has not been identified in the previous Inspectors report and the rural area accommodates a range of buildings.
- The appellant strongly disagrees with the previous refusal by the Board in relation to impact on visual amenity. Within the planning appeal report, three photographs of vantage points are provided, and it is considered that the house is invisible within the medium-long range views and any other conclusion would fail the reasonableness test. The site is not located in any European site. No specific trait to be protected has been identified.
- The Board is requested to have regard to stated case law in relation to practicality of considering the rural road network and to other ABP decisions. Road safety factors involve many elements. If refused, the applicant will have to drive to the site. The route is lightly trafficked. The earlier reports by Inspectors in the planning history failed to analyse the issue and the appellant considers the inclusion of same was unlawful having regard to stated case

law on the duty to give reasons. A traffic survey is reproduced that show low level traffic and low speed. The lack of passing points is incorrect.

6.2. Planning Authority Response

The PA confirms their decision.

6.3. Observations

None.

7.0 Assessment

- Principle of the development, context of CDP and visual Impact
- Planning history and unauthorised development
- Traffic
- Other Issues

7.1. Principle of the development, context of CDP and visual impact

- 7.1.1. Having regard to the contents of the appeal, it may be noted at the outset, that this appeal shall be determined as if the application been made to the Board in the first instance pursuant to section 37(1)(b) of the Planning and Development Act 2000, as amended.
- 7.1.2. The CDP and national guidance acknowledge the need of rural generated housing in certain circumstances.
- 7.1.3. Housing is open for consideration in the applicable zone, and this is qualified as to be in accordance with Council policy for residential development in rural areas, and not permitted above 350m contour. The development to be retained is below the 350m contour and the main relevant policy and standards are found in Policies H19, H23, NBHA15, section 12.6.9 and rural housing design.
- 7.1.4. Policy H19 Rural Housing in the zone HA – Dublin Mountain Zone, provides that new or replacement dwellings within areas designated Zoning Objective ‘HA-DM, “will only be considered in exceptional circumstances”. Policy H19 contains 2 objectives

of which H19 Objective 1 is relevant, To consider new or replacement dwellings within areas designated with Zoning Objective 'HA-Dublin Mountains' "in the following exceptional circumstances where all of the criteria below are met". I interpret Objective 1 in its ordinary meaning to allow the PA and the Board to consider new or replacement dwellings in exceptional circumstances which include all of the four listed criteria.

7.1.5. The first reason for refusal focuses on Policy H19. The 4 criteria in Objective 1 are assessed below with the applicable Development Management standards per section 12.6.9 in the CDP.

7.1.6. ***(1) The applicant is a native of the area; and***

Mr Cullen, one of the applicants has submitted documentation that establishes he is a native of the area.

7.1.7. ***(2) The applicant can demonstrate a genuine need for housing in that particular area; and***

7.1.8. This criterion formed the basis of reason for refusal no.1 by the PA.

7.1.9. Mr Cullen and his family live in the unauthorised structure sought to be retained on a small site outlined in red, which is adjacent to farmed lands outlined in blue where it is stated the overall landholding is 34.3 ha. It is noted in the submission that the applicant has insured over c200 acres (c.80-ha) of other farmed lands in various places. On inspection, it was clear that the applicant was involved in farming activity at the farmyard outlined in blue. In this regard, the first named applicant is a farmer and can demonstrate through action and supporting documentation a need to live in housing proximate to the farming enterprise, but this is subject to a suite of planning criteria.

7.1.10. The appeal includes extracts from a previous Inspector's report that indicates the applicant inherited the farm but not the family farmhouse, where family members resided which abuts the landholding to the southwest and it was submitted that it was not suitable to extend that house.

7.1.11. Section 12.6.9 of the CDP requires documentary evidence inter alia of a "map showing all existing family-owned property and lands" and I consider that this extends to generation above the applicant, and this has not been provided.

Notwithstanding this, I can identify that site from the planning history SD09A/0347 as fronting Ballymana Lane to the south and adjacent to the blue line, which is at a higher level than the access point to the appeal site. I consider that the appeal grounds state in detail that the farmer applicant must be beside his land for farming and security reasons which are reasonable, but no proper explanation is offered as to why the house was built where it is located. A “*rationale as to why a particular site has been chosen*” for development is to be provided under Section 12.6.9 of the CDP and this has not been submitted in the context of the other lands within the blue line.

- 7.1.12. The original permission for a large agricultural shed and access to it, was assessed by the PA on the understanding that the applicant was a farmer in the original farmhouse and no issue was raised at that time about the applicant having to live any closer to the permitted shed. Further information on SD09A/0347 justified the location of the shed as far as possible from the public road for security purposes and central to grazing lands.
- 7.1.13. Why the specific location was chosen, given the overall size of the landholding and the potential to cluster the development either beside the original family home or on lower lands closer to the farmyard and shed or the lands close to the cluster of buildings on Ballymaice Lane has not been addressed by the applicant in a satisfactory manner. As the appeal site abuts the site outlined in blue, I am not satisfied that a house located on the narrow farm access lane is appropriate for a number of reasons that are identified in this assessment. Had the application been made for permission for a new house on this specific site in the first instance, my view is that a development on the area identified as a paved area to accommodate bypass for farm machinery close to the eastern boundary would be refused in the absence of a persuasive rationale. The pattern of residential development in the area is that of houses accessed close to Ballymana Lane, set within a plot, not off an unsurfaced and narrow lane. The PA second reason for refusal includes that the development is haphazard and having regard to the specific location, I concur with that view and that the development is out of character with the surrounding pattern of development.
- 7.1.14. A strong justification in relation to the need for an additional dwelling in the rural area must be provided under Section 12.6.9 of the current CDP and this appears that as

the applicant started a family and needed his own home, they built the unauthorised structure close to the farm enterprise where the valuable farm assets could be protected and with ready accessibility to the livestock. Again, while that rationale is reasonable, the specific location of the development is not logical or optimum for a family home owing to the location on part of the farm access.

- 7.1.15. A rationale clearly detailing “why a family flat is not a suitable alternative” should also be provided under Section 12.6.9 of the current CDP. The Planner’s report raised this issue in the planning report and stated it could be addressed by further information (FI) but I do not consider that this section, raised in the planning report has been addressed in this appeal. The appeal holds that previous Inspector’s reports tacitly accept the location of the development, but I consider that the consistent refusals by the Board and the PA do not bear this out. The appeal provides extensive detailed information about certain planning policies and provisions but does not address section 12.9 of the CDP.
- 7.1.16. A 2012 letter from Mr Cullen attached to the appeal is not adequate in relation to section 12.6.9 of the CDP, and the failure to address the issue of the family lands, the added lands off Ballymaice Lane (which surround a cluster of buildings) and lack of a rationale of why the development to be retained was constructed in the exact location. Extracts from previous appeals about family members in the original family home and the rationale not to extend said home have not been provided in this application or appeal and I am not satisfied that the applicants could not have been accommodated elsewhere.
- 7.1.17. The applicant raises the legal issue of res judicata, (prohibiting reopening an issue already decided) that certain issues are already accepted in relation to the planning history and in particular the location of the dwelling. Having regard to the previous reasons for refusal by the Board, I do not consider that that the Board as the decision maker as opposed to the contents of the Inspector’s reports has decided that the location of the unauthorised structure is acceptable. In this regard, having regard to the increases in size of the landholding, the current development plan and that the legislation provides that the Board will consider this appeal as if it had been made to it in the first instance, and I am not persuaded that the applicant has satisfied the criteria for genuine need in this specific location in the area has been established.

- 7.1.18. ***(3)The development is related directly to the area’s amenity potential or to its use for agriculture, mountain or hill farming; and***
- 7.1.19. It may be noted that the applicant has submitted with the appeal a 2019 letter from Teagasc stating the Cullens have a herd of 150 cows and 450 sheep, centred on the home lands at Ballymana and the Cullens also lease other land. A 2023 herd profile indicates 120 cattle and a letter from the Dept. of Agriculture and the Marine confirms a TB infection 2028-2020. A 2022 ovine census states 639 animals but the location of the flock is not specified. The 2023-24 insurance provides for 250 cows and 415 sheep and the acreage is stated as 308 acres (c124 ha) which is larger than the lands in blue in Ballymana and includes the land leased. The PA considered that the application details were insufficient and could be addressed by FI. I consider the submitted details as sufficient to demonstrate the first named applicant is a farmer.
- 7.1.20. The appeal submits that the farm buildings are notably larger than the house to be retained. The farm building permitted by PA SD09A/0347 is unauthorised as it was not built in accordance with the permission, and retention of that structure was refused. Regardless of the planning status of the shed, of which much is made in the appeal, there is no specific quantum of farming specified in the CDP in relation to criteria no. 3 and this would be considered on a case by case basis per section 12.6.9. The house to be retained is home to a farmer, farming land within their ownership therefore I consider the house to be retained is undoubtably related to some of the farming enterprise, but not all as the applicant farms a larger quantum of land outside the Ballymana lands. I consider the applicant demonstrates the house to be retained relates to faming in Ballymana as evidenced on the site inspection and in relation to the documents submitted but this does not overcome the issue about the specific location of the house and the absence of other alternatives.
- 7.1.21. ***(4) The development would not prejudice the environmental capacity of the area, and that it would be in keeping with the character of the mountain area.***
- 7.1.22. I consider that this criterion overlaps with the CDP policies in relation to landscape character, visual impact and policy H23 Objective 1, (the second reason for refusal) to minimise impact on the landscape including views.
- 7.1.23. The application seeks permission to reclad the timber structure in blocks and erect a new slate roof. The CDP has zoned the house location as to protect and enhance

the outstanding natural character and amenity Dublin Mountains areas. The appeal makes the point that the subject lands are adjacent to rural zoned lands to the east and while this is correct, but I do not consider this is a transitional zone as the site is located in the outstanding natural character area. The sliver of land zoned RU at the is not where the house to be retained is located, but is the access created pursuant to a grant of permission for a farm shed.

7.1.24. The appellant contends that the area which surrounds and includes the appeal site is located in urban fringe/peri urban on map RH in the CDP. The incorrect location is identified in the appeal (map 7, p23). On the landscape character map referred to, the site is located on the border of the foothills/hills landscape character and the zoning has been outlined above.

7.1.25. The impact on the environmental capacity of a small house, wastewater treatment and associated works in the specific environment taken in isolation is considered low, as AA and EIA issues do not arise (see below) and have not arisen in recent applications/appeals.

7.1.26. The second element of criteria no. 4 relates to the proposed development being in keeping with the character of the mountain area. The building reads as a timber chalet of a temporary type of construction in an elevated mountain area. The application to clad the building in blockwork, render it and and put on a slate roof would create a permanent additional building in the area and the application drawings show a building in the same footprint and height as the existing structure. No foundations are illustrated, and it was observed as the site is not level, the southern side of the existing structure is supported underneath by blocks. I consider that providing a permanent house will require either filling in the southern end of the site or some excavating at the northern end. The term “reclad”, appears to remove the timber and replace with blocks and it is reasonable to assume that the façade will be removed as well as the existing roof. I consider therefore that this is an application for the removal of the structure and replacement on the same footprint rather than a simple alteration to it.

7.1.27. The proposed development is of a modest size and screened from the Ballymana Road owing to the location within the site. There are protected views along the Ballymaice Lane and Ballynascorney Road (R114) towards the farmed lands and

large sheds which is south east and lower in elevation. The appeal includes photographs from certain vantage points but not the above noted protected views and without the location of site annotated (either seen or unseen). A landscape and visual impact assessment has not been carried out and verified views have not been provided. NCBH15 Objective 2: requires a Landscape / Visual Assessment to accompany all planning applications for significant proposals that are likely to affect views and prospects. Given that this is a key issue in the reason for refusal by the PA (and in the planning history), the high degree of protection afforded by the zoning, and an absence of a full Landscape and Visual Impact Assessment, (LVIA), I am not satisfied that the development when combined with the large sheds and access road would not have an adverse visual impact from the protected views.

7.1.28. While this application is for a small house, in future, it is quite possible that residents would seek permission to extend the house owing to its size. A shed has been placed north of the small garden. While an application would be assessed at that time, I would have concerns owing to the development history on the site, of impacts from future development on the visual amenity of this particular zoning objective.

7.1.29. To conclude, owing to the potential cumulative impact with the existing structures on the site, the absence of a LVIA from the protected views in the CDP, I am not satisfied that the proposed development would not have a negative impact on the object to enhance the outstanding natural character and amenity of the Dublin Mountains areas contrary to H19 Objective 1, H23 Objective 1 and NCBH15 Objective 2.

7.2. Planning history and unauthorised development

7.2.1. The appeal raises the view of the inspector in the previous appeal that the entire site was unauthorised and highlights case law to support the contention that the Board may decide the application. The appeal also refers to the concept of unauthorised but immune (i.e. where the passage of time prevents enforcement and that the land is agricultural in use).

7.2.2. This assessment does not have a role in enforcement; however, the assessment acknowledges the facts that the structure the subject of the application was built and occupied without permission and the agricultural shed was not built in accordance with the permission in a highly scenic site zoned HA-DM, "To protect and enhance

the outstanding natural character and amenity of the Dublin Mountains areas". The house to be retained is in situ and the application for retention and permission is considered by the Board as if it had been made to it in the first instance. For the reasons outlined in this assessment, whether the application was for a new house on the specific location indicated as a layby for farm machinery in the parent shed permission or for retention of that house in that location, I do not consider that the specific location is appropriate in planning terms.

7.3. Traffic

- 7.3.1. The PA have refused permission on the grounds of traffic safety and a traffic survey resubmitted by the appellant indicates low and slow traffic movements. Ballymana Road is a cul de sac and further south there are signs not to park in a setback area. The road is attractive with expansive views and no footpaths for walkers.
- 7.3.2. The appeal site has several tractors and 4 cars/jeeps. From visiting the site, I agree that Ballymana Lane is significantly substandard in terms of its width, vertical and horizontal alignment and is inadequate for two cars to pass along much of the road. There was no evidence on inspection to contradict the submission of the appellant that the road is lightly trafficked. The appeal also contends that traffic associated with the farm would occur even if the farmer did not live on the site. The PA grant for a shed in PA ref. 09A/0347 incorporated a narrow farm access off Ballymana Road for one shed and not for a house in its current position. In this regard, I consider that the house does generate additional traffic movements associated with family life in a rural area and these additional movements on the substandard local road network have not been considered by the appellant.
- 7.3.3. **NEW ISSUE (Traffic).**
- 7.3.4. The first named appellant states in Appendix A that he also has an agri-contracting business. In this regard, while I consider that it is normal for farmers to have other part time work and this is not precluded in any way in the rural housing policy, an agri contracting business would increase farm and other vehicular traffic along this substandard road. This was not raised in the PA assessment or appeal and the Board may wish to raise same as a new issue or mention in a note as there are substantive reasons for refusal for the information of the appellants.

- 7.3.5. The Rural Housing Design section 12.6.9 of the CDP requires inter alia that driveway and parking areas provide sufficient area for car parking and turning on site and should follow the natural slope and contours of the site. The existing dwelling is located c 1.9 from the eastern boundary on a section of land designated previously as a layby, directly onto a lane and opposite a steep bank on a sloping site. As the site slopes steeply south at the gable end of the, no adequate parking and turning has been demonstrated. This reiterates my view that the location of the structure to be retained is haphazard and out of character with the pattern of development in the area and wholly unsuitable within the landholding for existing and future residents..
- 7.3.6. I concur with the view of the roads department and PA that permission should be refused for reason relating to traffic.

7.4. Other Issues

- 7.4.1. Having read the file, consider that the wastewater proposal disposal is acceptable.
- 7.4.2. The appeal includes details and a medical report that an immediate family member should not move from the house and not have any further disruption to their life. The appeal has not referenced exceptional health grounds as provided in the Sustainable Rural Housing Guidelines or sections 6.9.1/12.6.9 of the CDP but I am cognisant of the provisions. The appeal does not address and nor does the medical report that to re-clad the building and put on a new roof, that the house is essentially being replaced with a permanent structure on same footprint. While the submitted report does raise a serious issue for the family member, it is reasonable to assume that the family will have to move out of the timber structure in order for it to be rebuilt as a new structure and this disturbance has not been addressed by the health official. An application was made to the PA and not appealed for a new house on the site in a different location and this issue did not arise then and may have arisen at a later date. Accordingly, I do not consider that the appellant has made a case for an exceptional health case.

7.5. Appropriate Assessment Screening

- 7.6. Having regard to the nature and scale of the proposed development, the nature of the foreseeable emissions therefrom/to the absence of emissions therefrom, the nature of receiving environment as a built up urban area and the distance from any European site/the absence of a pathway between the application site and any

European site it is possible to screen out the requirement for the submission of an NIS and carrying out of an EIA at an initial stage.

8.0 Recommendation

8.1. I recommend that permission be refused.

9.0 Reasons and Considerations

1. The development site is located in an area with the zoning objective HA-DM in the South Dublin County Development Plan 2022- 2028 'To protect and enhance the outstanding natural character and amenity of the Dublin Mountains areas' and in an area identified as under strong urban influence in the County Development Plan. It is considered that the applicant has presented insufficient evidence to warrant retention of a residential structure at this specific rural location and alterations in the form of new blockwork and a new roof, within the scope of all of the exceptional circumstances criteria required in Policy H19 Objective 1 and is not in accordance with Policy H23 Objective 1 and Section 12.6.9 of the County Development Plan. The location of the house to be retained is in an area that was identified as an area paved to accommodate bypass for farm machinery in Planning Ref. SD09A/0347. It is considered that the applicant has not established a rationale why the site has been chosen on the overall landholding (including the original farm dwelling) or clearly detailing why a family flat was not a suitable alternative. It is considered that the location of the proposed development sought to be retained would be out of character with the surrounding pattern of development in the area, onto a narrow farm access lane. The development for which permission proposed for retention is sought would, therefore, be contrary to the zoning objective for the area, the provisions in the County Development Plan and would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the elevated location of the development proposed for retention in an area designated as 'outstanding natural character of the Dublin Mountains Area' in the South Dublin County Development Plan 2022-2028, the proximity of the designated views on Ballyhaise Lane and the R114, policy NCBH15 Objective 1, to protect, preserve and improve Views and Prospects of special amenity, and policy

NCBH15 Objective 2 to require a Landscape / Visual Assessment in certain circumstances, it is considered that the applicant has not demonstrated to the satisfaction of the Board that the development would not seriously injure the visual amenities of the area. It is considered that the proposed development would interfere with the character of the surrounding landscape, which it is necessary to preserve in accordance with objective HA-DM of the County Development Plan and would set an undesirable precedent for similar development in the area. The development for which permission proposed for retention and permission is sought would, therefore, be contrary to the proper planning and sustainable development of the area.

3. Having regard to the substandard width, and vertical and horizontal alignment of Ballymana Lane, it is considered that the development for which retention and permission is sought would lead to additional traffic turning movements generated onto a narrow substandard road and would, therefore, endanger public safety by reason of traffic hazard.

Note: The first named applicant operates a seasonal agri contracting business which could increase farm and other vehicular traffic along Ballymana Lane, and no detail is available of traffic generated from this business. The application also does not demonstrate adequate parking or a sufficient area for turning on site within the red line, in accordance with section 12.6.9 of the South Dublin County Development Plan 2022-2028 on rural housing design. Given the substantive reasons for refusal, these matters were not raised as a new issue.

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.

Rosemarie McLaughlin
Planning Inspector

13th March 2024