



An
Bord
Pleanála

Inspector's Report

ABP-319098-24

Development

Single storey dwelling, garage structure, permeable paving, site walls and entrance gate, driveway, soakpit, waste water treatment plant with polishing filter, landscaping, SUDS and all associated site and other works.

Location

Knightstown, Ballyboughal, Co. Dublin

Planning Authority

Fingal County Council

Planning Authority Reg. Ref.

F23A/0705

Applicant(s)

Bernadette Hamilton

Type of Application

Permission

Planning Authority Decision

Refuse Permission

Type of Appeal

First Party

Appellant(s)

Bernadette Hamilton

Observer(s)

None

Date of Site Inspection

11th April 2024

Inspector

Emma Nevin

1.0 Site Location and Description

- 1.1. The appeal site, which has a stated area of 0.219 ha, is located within the rural townland of Knightstown, to the northeast of Ballyboughal.
- 1.2. The appeal site comprises undeveloped agricultural land. The site is slightly elevated from south to north and is bound by agricultural land to the north, east and south. The site is presently enclosed by a metal fence, with part of the site sectioned off to house machinery, cars and as a grazing pasture for sheep. There is an existing residential dwelling to the north, and to the southwest, of the site.
- 1.3. Access to the site is via an existing access of the local access road to the southwest corner.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a detached single storey dwelling, which will be positioned to the north of the site. The proposed dwelling has an L-shaped configuration with a stated floor area of 144.7 sq. m. A detached garage is also proposed to the north, which will be located to the east side of the dwelling, with a floor area of 32 sq. m.
- 2.2. The dwelling will have pitched roof, with elevations comprising painted plaster, a stone feature wall and slate roof tiles.
- 2.3. As part of the ancillary works the existing agricultural entrance to the southwest, is proposed as the new entrance to the site from the local access road.
- 2.4. A new soakpit, waste water treatment plant with polishing filter is proposed to serve the dwelling.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority refused permission on the 23rd January 2024 for the following reasons:

“1. The proposed development is located within an area zoned ‘RU’ – Rural’ in the Fingal Development Plan 2023 - 2029 where the objective seeks 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. Policy SPQ HP46 – Rural Settlement Strategy, of the Development Plan seeks inter alia to 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. The Planning Authority is not satisfied, on the basis of the information submitted, that the applicant has a demonstratable economic or social need to live in this specific rural area. In the absence of identified locally based need for house at this location, it is considered that the proposed development would be contrary to objective 19 of the National Planning Framework and would contravene materially a development objective indicated in the Development Plan with regard to the Fingal Rural Settlement Strategy and would be contrary to the proper planning and sustainable development of the area.

2. The Planning Authority has previously met the housing need requirements of the applicant by virtue of a grant of planning permission for permanent place of residence under Reg. Ref. F05A/ 1451 whereby permission was granted to the applicant's husband. It is therefore considered that the applicant, does not come within the Fingal Rural Settlement Strategy – Rural Generated Housing Need as set out under Section 3.5.15.3 of the Fingal Development Plan 2023 - 2029 and whereby no individual applicant will receive planning permission for more than one house. The proposed development would therefore contravene materially at development objective of the Fingal Development Plan 2023 - 2029 with regard to the Fingal Rural Settlement Strategy and would contravene the RU land use zoning objective pertaining to the site, whereby permission will only be generated for residential development subject to compliance with the Fingal Rural Settlement Strategy. The development would therefore be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

- 3.2.1. A planning Report dated 14th September 2023 has been provided.
- 3.2.2. The original planning report concluded that *“residential development is only permitted on land zoned or ‘RU’ Rural or the applicant has established a genuine need to live in the rural area. The applicant in this instance, is seeking permission for a new rural dwelling on the basis of ‘Other’ as set out under ‘Question 8’ of the Supplementary Application Form. Based on the information submitted the applicant states that she has resided with her husband at a property adjacent the subject dwelling and refers to Reg. Ref. F05A/ 1451 under which permission was granted to a Mr. Patrick William Hamilton for a one and a half storey three-bed residential dwelling with external garage. Accordingly, it appears that the applicant’s housing need has been satisfactorily addressed. The proposal does not therefore comply with the Fingal Rural Settlement Strategy and does not comply with the Sustainable Rural Housing Guidelines for Planning Authorities (DoEHLG) or Objective 19 of the National Planning Framework”*, and as such permission was refused for two reasons as noted in Section 3.1.1 above.
- 3.2.3. Other Technical Reports:
- Parks and Green Infrastructure: Report received recommending conditions.
 - Water Services: Report received recommending conditions.
 - Transportation: Report received recommending conditions.

3.3. Prescribed Bodies

- 3.3.1. The Planning Authority indicated that the following prescribed bodies were consulted.
- Uisce Eireann: Report received recommending conditions.

3.4. Third Party Observations

- 3.4.1. One third party observation was received, the main issues raised are summaries as follows:
- Inadequate and hazardous access laneway.

- The condition of the laneway has deteriorated since the grant of permission made to the applicants' husband in 2006.
- The applicants' husband was previously granted planning permission (Reg. Ref. D05A/1451) adjacent to the current site and where the family currently resides. No local need arises for a second property, this would be contrary to local needs requirements.
- The original site has been subdivided since the initial grant of permission in 2006.
- The applicant has resided at the dwelling permitted under Reg. Ref. D05A/1451.
- Aspects of the existing dwelling do not comply with the grant of permission received.
- The site is not within the ownership of the applicant.

4.0 Planning History

Subject site:

Reg. Ref. F23A/0529: Planning permission refused by Fingal County Council on XX October 2023 for a single storey dwelling, garage structure, permeable paving, site walls and entrance gate, driveway, soakpit, wastewater treatment plant with polishing filter and all associated site works.

The reasons refusal stated:

"1. The proposed development is located within an area zoned 'RU' – Rural' in the Fingal Development Plan 2023 - 2029 where the objective seeks 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. Policy SPQ HP46 – Rural Settlement Strategy, of the Development Plan seeks inter alia to 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. The applicant has not submitted documentary evidence to demonstrate satisfactory compliance with policy SPQHP 46, or to demonstrate compliance with the Fingal Rural Settlement Strategy Rural Generated Housing Need as set out in section 3.5.15.3 of the Development Plan over the requirements of table 5.3 criteria for eligible applicants from the rural community for planning permission for new housing. Accordingly, and in the absence of such verifiable documentary evidence, the development as proposed would be contrary to Objective 19 of the National Planning Framework and would contravene materially a development objective indicated in the development plan in regard to the Fingal Rural Settlement Strategy and would therefore be contrary to the proper planning and sustainable development of the area”.

Relevant permission on adjoining lands:

Reg. Ref. F07A/1024: Planning permission granted by Fingal County Council on 19th December 2007 (extended under Reg. Ref. D07A/1024/E1) for a single storey shed for agricultural use (160m²) & associated external works.

Reg. Ref. F05A/1451: Planning permission granted by Fingal County Council on 19th January 2006 for a single storey dwelling, garage structure, permeable paving, site walls and entrance gate, driveway, soakpit, wastewater treatment plant with polishing filter and all associated site works.

5.0 Policy Context

5.1. Fingal County Development Plan 2023 – 2029

- 5.1.1. The subject site is zoned ‘RU’ – Rural’, the objective of which is to ‘protect and promote in a balanced way, the development of agriculture and rural related enterprises, biodiversity, the rural landscape, and the built and cultural heritage’.

The subject site is also located within the high lying agriculture landscape designation and is within a highly sensitive landscape.

- 5.1.2. The following are of relevance:

- Policy CSP45 – Rural Housing, which states “*In line with RPO 4.80, manage urban generated growth in Rural Areas Under Strong Urban Influence by*

ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory Guidelines and plans, having regard to the viability of smaller towns and rural settlements”.

- Policy CPS46 – Rural Settlement Strategy, which states *“Respond to rural-generated housing need by means of a rural settlement strategy which directs the demand where possible to Rural Villages and Rural Clusters and permit housing development in the countryside only for those people who have a genuine housing need in accordance with the Council’s Rural Housing Policy and where sustainable drainage solutions are feasible”.*
- Policy CSP47 – Rural Clusters, which states, *“Promote appropriate sustainable growth of the Rural Clusters balanced with carefully controlled residential development in the countryside”.*
- Objective CSO81 – Rural Settlement Strategy, which states *“Implement the Rural Settlement Strategy contained in Chapter 3 Sustainable Placemaking and Quality Homes and associated Development Management Standards set out in Chapter 14”.*
- Policy SPQHP46 – Rural Settlement Strategy, which states *“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 3.5.15.3 Fingal Rural Settlement Strategy Rural Generated Housing Need.
- Section 3.5.15.7 Layout and Design for Housing in Rural Fingal.
- Policy SPQHP55 – Layout and Design of Rural Housing, which states *“Require that all new dwellings in the rural area are sensitively sited, demonstrate consistency with the immediate Landscape Character Type, and*

make best use of the natural landscape for a sustainable, carbon efficient and sensitive design”.

- Objective SPQHO84 – Compliance with Development Management Standards in Rural Areas, which states, *“Applications for dwellings in rural areas of Fingal will be required to demonstrate compliance with layout and design criteria set out in Chapter 14 Development Management Standards including the carrying out of an analysis/feasibility study of the proposed site and of the impact of the proposed house on the surrounding landscape in support of applications for planning permission”.*
- Table 3.3: Maximum Number of Houses which will be permitted per existing house.
- Table 3.4: Who is Eligible for Planning Permission.
- Table 3.5: Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing, which states,

“i. One member of a rural family who is considered to have a need to reside close to their family home by reason of close family ties, and where a new rural dwelling has not already been granted planning permission to a family member by reason of close family ties since 19th October 1999. The applicant for planning permission for a house on the basis of close family ties shall be required to provide documentary evidence that:

S/he is a close member of the family of the owners of the family home.

S/he has lived in the family home identified on the application or within the locality of the family home for at least fifteen years.

ii. A person who has been in employment in a full-time occupation which is considered to satisfy local needs by predominantly serving the rural community/economy for fifteen years prior to the application for planning permission, and has not already been granted planning permission for a new rural dwelling since the 19th October 1999. Documentary evidence of such employment is required.

iii. A person who is an immediate member of a rural family who has not been granted permission for a rural dwelling, since the 19th October 1999, and is

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

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

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

Such applicants will be required to satisfy the Council of their long-term commitment to operate a full-time business from their proposed home in a rural area, as part of their planning application. The applicant will outline within a submitted Business Plan how their business will contribute to and enhance the rural community and will demonstrate to the satisfaction of the Council that the nature of their employment or business is compatible with, and addresses and satisfies local needs, and will protect and promote the rural community.

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

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

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

- Section 14.12 Rural Fingal.
- Section 14.12.1 Design Criteria for Rural Villages and Rural Clusters.
- Section 14.12.2 Design Criteria for Housing in the Countryside.

- Section 14.20.2 Rural Housing – Wastewater Treatment.
- Objective DMSO200 – EPA’s Code of Practice for Domestic Wastewater Treatment Systems, which states “*Domestic effluent treatment plants and percolation areas serving rural houses or extensions shall comply with the requirements of the EPA’s Code of Practice for Domestic Wastewater Treatment Systems (Population Equivalent)*”.
- Section 14.20.3 Sustainable Urban Drainage Systems (SuDS).
- Section 1.10.2 Appropriate Assessment (AA).

5.2. National Planning Framework (NPF)

5.2.1. National Policy Objective (NPO) 19 states it is an objective to 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. Regional Spatial and Economic Strategy (RSES) - Eastern and Midland Regional Assembly (EMRA)

5.3.1. The NPF and RSES make a distinction between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and rural areas outside these catchments. In such areas a more flexible approach based primarily on siting and design will apply.

- 5.3.2. For some rural areas, urban and commuter generated development has undesirably affected the character and cohesion of these locations. Simultaneously, in less accessible rural locations, population levels have declined, and it has been difficult to sustain basic services and community facilities at these locations.
- 5.3.3. Regional Policy Objective (RPO) 4.80 states that 'local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.4. **Section 28 Ministerial Guidelines**

- 5.4.1. Sustainable Rural Housing Guidelines for Planning Authorities, 2005
- 5.4.2. The subject site is located within an 'Area under Strong Urban Influence' as identified in Map 1: Indicative Outline of the NSS rural area types in the Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be on the one hand to facilitate the housing requirements of the rural community, as identified by the Planning Authority in the light of local conditions, while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the development plan.
- 5.4.3. Circular Letter SP 5/08 was issued after the publication of the guidelines on 30th September 2009. The letter states that all planning applications for houses in rural area, regardless of where the applicant comes from, or whether they qualify under specific criteria, must continue to be determined on the basis of proper planning and sustainable development of the area, in accordance with Development Plan policies regarding overarching environmental concerns, including the protection of natural assets, landscape, siting and design, traffic safety, etc.

5.5. Natural Heritage Designations

- 5.5.1. The subject site is not located within a designated European Site. The closest such sites are the Rogerstown Estuary SAC (Site Code 00208) and Rogerstown SPA (Site Code 00415), to the south-west of the Skerries Island SPA (Site Code 004122), west of the North-West Irish Sea SPA (Site Code 004236).

5.6. EIA Screening

- 5.6.1. I refer the Board to the completed Form 1 and Form 2 in Appendix 1. Having regard to the nature, size, and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A first party appeal has been received; the grounds of appeal are summarised below:
- The Council has failed to have due regard to the applicant's genuine housing need and their long-established connection to the rural area.
 - The applicant has lived in the area for an extended period, in excess of 17 years.
 - The house where the applicant currently resides was granted planning permission 2005, the applicant was her husband.
 - The applicant has never been granted planning permission for the development of a dwelling.
 - The applicant can be considered a member of a rural family and has close family ties to the area.
 - The dwelling the applicant has lived for 17 years is currently the subject of High Court proceedings Ref. 2015/1686S.

- The applicant has been advised to seek alternative living arrangements pending the judgement of this case and the applicant is not in a position to purchase a plot in an alternative location or purchase an existing dwelling.
- The criteria for development of a rural dwellings notes that a member of a rural family who can demonstrate close family ties will be eligible where a new dwelling has not been “granted planning permission to a family member by reason of close family ties since 19th October 1999”.
- The plan states that the maximum number of incremental houses which will be granted in areas zoned RU, rural is limited to two dwellings. There is provision in the policy for the development of an incremental house.
- The Bord are asked to have due regard to this decision from the High Court.
- The proposed is not urban generated development.
- The planning authority fails to response to the unique circumstances of the applicant and their rural housing need.
- The proposed development has been designed in accordance with the development management guidelines for rural dwellings and circumstances a well-designed and well sited development.
- The has long established social ties to the area and had a need for a dwelling pending the judgement of the Court.

6.2. Applicant Response

None received.

6.3. Planning Authority Response

- 6.3.1. Report received from Fingal County Council which states that the Planning Authority maintains the opinion that the proposed development would contravene materially the Rural Settlement Strategy as set out in the Fingal Development Plan 2023 – 2029 including policy SPQHP46. The Planning Authority also maintains that the housing need requirement of the applicant has already been met by virtue of a grant of planning permission for a rural dwelling under Reg. Ref: F05A/1451.

As such, An Bord Pleanála is requested to uphold the decision of the Planning Authority.

- 6.3.2. The report concludes that in the event that this appeal is successful, provision should be made in the determination for applying a financial contribution and/or Bond in accordance with Fingal County Council's Section 48 Development Contribution Scheme.

6.4. **Observations**

None received.

6.5. **Further Responses**

None received.

7.0 **Assessment**

- 7.1. Having inspected the site and consider the contents of the appeal, I consider the main issues which arise in relation to this appeal are as follows:

- I. Compliance with Rural Housing Policy - Rural Generated Housing Need
- II. Legal Issues
- III. Road Access
- IV. Appropriate Assessment, and
- V. Other Matters.

7.2. **Compliance with Rural Housing Policy - Rural Generated Housing Need**

- 7.2.1. The appeal site is located within a rural area of Fingal. The two reasons for refusal are similar in nature and relate to the appellants compliance with the policies on rural housing. Policy Objective SPQHP46 – Rural Settlement Strategy of the Development Plan details the compliance in relation to rural housing requirements. Specifically, the that housing will be facilitated based on the applicant's genuine local and housing need, compliance will be demonstrated by means of economic or social need in the context of the rural housing policy and this is a key consideration for any planning application for a single one-off house in a rural area.

- 7.2.2. Reason for refusal no. 1 stated that the planning authority is not satisfied that the applicant has a demonstratable economic or social reason to live in this specific local area, specifically referencing the aforementioned Policy Objective in this regard.
- 7.2.3. Based on the information submitted, both as part of the planning application and the appeal, I note that the applicant's need for the dwelling house is based on 'other', which relates to a legal situation pertaining to the repossession of the appellants existing residence (referred to as the appellants husband's house), which adjoins the appeal site. The appellant states that this is a unique circumstance and the appellant wishes to remain in this area, following residing in the locale for 17 years, and has been advised to seek alternative accommodation. I acknowledge the unique situation of the appellant, however, in examining the information received and the requirements of the Development Plan, I am not satisfied that the applicant has adequately demonstrated a social or economic need to reside in this area in accordance with the County Development Plan requirements. While I would acknowledge the desire of the applicant to build a new dwelling in close proximity to the existing dwelling in which she resides, in my opinion, this does not amount to a genuine housing need notwithstanding the unique circumstances of this appeal.
- 7.2.4. Reason for refusal no. 2 stated that the housing need requirements of the applicant have been met, by virtue of a grant of permission for a dwelling house under Reg. Ref. F05A/1451, referenced in Section 4 above, and therefore the applicant does not come within the criteria as set out under Section 3.5.15.3 of the Development Plan, whereby no individual applicant will receive planning permission for more than one house.
- 7.2.5. Following site inspection, and noting the planning history on site, I note that the surrounding area is characterised by one-off houses, with an existing dwelling to the north of the appeal site, which was indicated to be within the applicant's landholding, noting the plans and particulars submitted as part of the planning history files. The appellant has also confirmed they reside in the dwelling permitted under Reg. Ref. F05A/1451, whereby the applicant was the appellant's husband.
- 7.2.6. The appeal states that the appellant can be considered a member of a rural family, has close family ties and has not been granted planning permission since 1999 and as such meets the criteria for an applicant to develop a rural dwelling on the basis of

close family ties. The appeal also references that the Development Plan states that the maximum number of incremental houses which will be granted in areas zoned RU, rural is limited to two dwellings, and submits that there is provision in the policy for incremental houses as no additional dwelling has been granted previously on the bases of the existing dwelling. It is incorrect to state the applicant has been granted permission previously and the applicant cannot be granted planning permission as a conduit of the grant of permission to their spouse.

- 7.2.7. In relation to the requirements of the Development Plan, Section 3.5.15.3 provides guidance in relation to rural housing and states that 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 in the Plan. Based on the information submitted, I consider that the appellant has a long-standing existing tie to the rural area, as it is stated she has resided in the area for significant period of time, some 17 years.
- 7.2.8. However, noting the requirements of Table 3.5 Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing of the Plan, in particular Section (i) which states that one member of a rural family who is considered to have a need to reside close to their family home, and where a new rural dwelling has not already been granted to a family member by reason of close family ties since 19th October 1999, the applicant shall provide evidence in relation to her family ties. In relation to the wording of the criteria, which clearly states that one member of a rural family shall be considered, the appellant's husband, as stated in the submitted documentation, with whom she resides, was granted permission for a rural dwelling house under Reg. Ref. D05A/1451 (decision date 19th January 2006). Furthermore, I consider that the term rural family, to include a group of people united by the ties of marriage and as such given that the rural housing need of one member of the family was met under the previous permission granted, that this is assumed to include the appellant (previous applicants' husband) in this instance under the term rural family.

I do not consider that Sections (ii), (iii) or (iv) of Table 3.5 to be of relevance to the instance appeal, and therefore these will not form part of my assessment.

7.2.9. The appeal also references that the Development Plan states the maximum number of incremental houses which will be granted in rural areas is limited to two dwellings, as no additional dwelling house has been granted previously on the basis of the existing dwelling. In this regard, I reference Objective SPQHO72 – Maximum Number of Incremental Houses in RU Zoned Areas, which states that a maximum number of two incremental houses for those within areas with zoning objective RU, will be less any additional house which has been granted planning permission. Notwithstanding the provision of the additional dwelling house specifically states that this is for a person with exceptional health circumstances/plus one where exceptional farming circumstances prevail. Nothing this criterion and based on the information submitted, I do not consider that the instant appeal can be considered in this instance.

7.2.10. As such, I conclude that the applicant has not demonstrated a social or economic need to live in this location and does not comply with the criteria of Table 3.5 Criteria for Eligible Applicants from the Rural Community for Planning Permission for New Rural Housing and as such contravenes the requirements of the Fingal Rural Settlement Strategy – Rural Generated Housing. For this reason, the proposed development would, therefore, be contrary to the proper planning and sustainable development of the area and a refusal is recommended.

Should the Board come to a different decision on this matter, I consider that an occupancy condition restricting occupancy of this dwelling house specifically to the applicant be attached to any grant of permission.

7.3. Legal Issue

7.3.1. The appellant states that the existing dwelling is subject to legal proceedings and has referenced a High Court case in this regard. The appellant also requests that the Bord has due regard to the decision from the High Court when assessing this appeal, in particular the fact that the applicant has been requested to seek alternative accommodation. While this unique case is acknowledged, I consider that the consideration of such activity falls outside of the Board's remit in deciding this application. This assessment represents my de novo consideration of all planning issues material to the proposed development in respect of the relevant Fingal County Development Plan 2023 – 2029 policy, in addition to noting relevant National Policy.

- 7.3.2. I also note that all appeal cases are assessed and determined on their own merits having regard to the sensitivity of the receiving environment and the specifics of the proposed development.

7.4. Road Access – New Issue

- 7.4.1. The appeal site is located approx.. 750 metres along a narrow substandard cul-de-sac local road, which is accessed off Knightstown Road at a bend in the road. The cul-de-sac local road terminates at the existing dwelling, which the applicant resides, with the appeal site directly adjoining these lands. The cul-de-sac laneway currently serves eight private dwelling houses, one derelict cottage and numerous gateways to fields and farmsteads. There are no formal roadside verges, the width of the lane is approx. 3 metres, the carriageway edge falls away steeply in places and there are drainage ditches located along portions of the carriageway. The horizontal alignment, surface quality and finish are poor and extremely poor in parts with grass growing along the centre line of the road for part of its length.
- 7.4.2. The site layout plan submitted indicates the proposed new access to serve the dwelling will replace an existing agricultural vehicular entrance to the lands. The proposed vehicular entrance is located on the outer side of a bend in the road. Following my inspection of the site, I consider that adequate sightlines could be achieved at the entrance to the site, and I also note the Transportation Planning Division comments in this regard, that the layout of the entrance would be generally acceptable subject to conditions.
- 7.4.3. Notwithstanding, I consider this road to be substandard in terms of width and alignment. Given my deliberations with respect to the issues raised associated with the applicants' genuine need for one off rural housing at this location, I consider the site is located on a minor cul-de-sac laneway which is seriously substandard in terms of width and alignment. As such, the proposed development, if permitted, would lead to intensification of the use of this laneway and, therefore, endanger public safety by reason of traffic hazard and obstruction of road users. I recommend that permission be refused in this instance.

However, this is a new issue, and the Board may wish to seek the views of the parties in this regard.

7.5. Appropriate Assessment

- 7.5.1. Having regard to the nature and scale of the proposed development and the nature of the receiving environment and the distance to the nearest European site, no Appropriate Assessment issues arise, and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.6. Other Matters

7.6.1. Wastewater

- 7.6.1.1. The applicant is proposing to install a wastewater treatment system with polishing filter. A site characterisation report has been submitted as part of the planning application. The site plan indicates that the proposed wastewater treatment system will be 22.5 metres from the existing well on site. As noted in the report received by Water Services Department, a recommended 25 metre separation distance should be achieved from any existing well on site. Given the overall site area, I consider that this could be achieved by way of a compliance condition and should not be included as a reason for refusal. As such, subject to this agreement with the Planning Authority, I consider that the wastewater treatment system and percolation area to be acceptable.
- 7.6.1.2. In the event that the Board considers that the proposed development should be granted, a condition regarding the requirements of the wastewater treatment system, as noted above, to be agreed prior to the commencement of development should be included.

8.0 Recommendation

- 8.1. I recommend that planning permission should be refused for the reason and considerations set out below.

9.0 Reasons and Considerations

- 9.1. Having regard to the location of the site of the proposed development within an area designated 'RU – Rural' in the Fingal County Development Plan 2023-2029 and in the absence of sufficient evidence to demonstrate compliance with the Fingal Rural Settlement Strategy – Rural Generated Housing Need, it is considered that, based on the information submitted with the planning application and the appeal, that the applicant has not sufficiently demonstrated compliance with the new rural housing criteria as outlined in Section 3.5.15.3 and Table 3.5 of the Fingal County Development Plan 2023 - 2029. The proposed development would therefore contravene Policy SPQHP46 of the Fingal County Development Plan 2023 – 2029 and would, thereby, be contrary to the proper planning and sustainable development of the area.
- 9.2. The site is located near the termination of a minor cul-de-sac road which is seriously substandard in terms of width and alignment. In the absence of a genuine need for a dwelling house at this rural location, the proposed development, if permitted, would lead to intensification of this substandard road, and would therefore endanger public safety by reason of traffic hazard and obstruction of road users.

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.



Emma Nevin
Planning Inspector

18th April 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

| | | | |
|---|--|---|--|
| An Bord Pleanála Case Reference | 319098-24 | | |
| Proposed Development Summary | Single storey dwelling, garage structure, permeable paving, site walls and entrance gate, driveway, soakpit, waste water treatment plant with polishing filter, landscaping, SUDS and all associated site and other works. | | |
| Development Address | Kinghtstown, Ballyboughal, Co. Dublin | | |
| 1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings) | | Yes | X |
| | | No | |
| 2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) or does it equal or exceed any relevant quantity, area or limit where specified for that class? | | | |
| Yes | | | |
| No | X | | Proceed to Q.3 |
| 3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]? | | | |
| | | Threshold | Comment (if relevant) |
| No | | N/A | |
| Yes | X | Class 10 Infrastructure Projects (b) (i) | Proposal is significantly below 500 unit threshold |
| | | | Proceed to Q.4 |


| 4. Has Schedule 7A information been submitted? | | |
|--|---|----------------------------------|
| No | X | Preliminary Examination required |
| Yes | | Screening Determination required |

Appendix 1 - Form 2

EIA Preliminary Examination

| | | |
|--|---|----------------------|
| An Bord Pleanála Case Reference | 319098-24 | |
| Proposed Development Summary | Single storey dwelling, garage structure, permeable paving, site walls and entrance gate, driveway, soakpit, waste water treatment plant with polishing filter, landscaping, SUDS and all associated site and other works. | |
| Development Address | Kinghtstown, Ballyboughal, Co. Dublin | |
| The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations. | | |
| | Examination | Yes/No/ Uncertain |
| Nature of the Development Is the nature of the proposed development exceptional in the context of the existing environment? | Proposal for the construction of a dwelling house, detached garage and associated site works on residential zoned land located in a rural area. However, the proposal is not considered exceptional in the context of the existing rural environment. | No |
| Will the development result in the production of any significant waste, emissions or pollutants? | The proposal will be connected to a proposed new wastewater treatment system, on site. | |
| Size of the Development Is the size of the proposed development exceptional in the context of the existing environment? | Site measuring 0.219 ha. The proposed floor area will be 144.7 sq. m., with a detached garage of 32 sq. m. The proposal is not considered exceptional in the context of the existing rural environment. | No |
| Are there significant cumulative considerations having regard to other existing and/or permitted projects? | There are no other developments under construction in the proximity of the site. | |

| | | |
|---|---|-----------|
| <p>Location of the Development</p> <p>Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location?</p> <p>Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?</p> | <p>The appeal site is not located within any Natura site. The closest such site to the west is the Rogerstown Estuary SAC (Site Code 00208) and Rogerstown SPA (Site Code 00415), to the south-west of the Skerries Island SPA (Site Code 004122), west of the North-West Irish Sea SPA (Site Code 004236), however, it is not considered that the development would have a significant impact on the ecological sites.</p> <p>The other nearest European site is located above 1km from the site and therefore can be excluded in terms of the potential for effects on other European sites during construction and operational phases of the proposed development.</p> | <p>No</p> |
| <p style="text-align: center;">Conclusion</p> <p>There is no real likelihood of significant effects on the environment.</p> <p>EIA not required.</p> | | |

Inspector:  _____ Date: 18th April 2024

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)