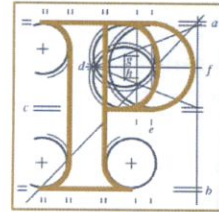


Our Case Number: ABP-315489-23

Planning Authority Reference Number: SD22A/0402



**An
Bord
Pleanála**

South Dublin County Council
Planning Department
County Hall
Tallaght
Dublin 24



Date: 11 January 2023

Re: House, wastewater sewage treatment system and polishing filter, stormwater harvesting tank and soakaways, weel, vehicular access, landscaping and ancillary site works.
Crocaunadreenagh Road, Redgap, Rathcoole, Co. Dublin

Dear Sir / Madam,

Enclosed is a copy of an appeal under the Planning and Development Act, 2000, (as amended).

Submissions of documents etc., to the Board. N.B. Copies of I-plans are not adequate, all drawings and maps should be to scale in accordance with the provisions of the permission regulations.

1. The planning authority is required to forward specified documents to the Board under the provisions of section 128 and section 37(1)(b) of the Planning and Development Act, 2000, (as amended). Please forward, **within a period of 2 weeks beginning on the date of this letter, the following documents:-**

- (i) a copy of the planning application made to the planning authority and a copy of any drawings, maps (including ordnance survey number) particulars, evidence, a copy of any environmental impact statement, other written study or further information received or obtained by your authority in accordance with regulations under the Acts. If practicable, the original of any drawing with coloured markings should be provided or a coloured copy,
- (ii) a copy of any technical or other reports prepared by or for the planning authority in relation to the application,
- (iii) a certified copy of the relevant Manager's Order giving the decision of the planning authority,
- (iv) a copy of the notification of decision given to the applicant,
- (v) particulars of the applicant's interest in the land or structure, as supplied to the planning authority,
- (vi) a copy of the published notice and a copy of the text of the site notice erected on the land or structure,

Teil	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1800 275 175
Facs	Fax	(01) 872 2684
Láithreán Gréasáin	Website	www.pleanala.ie
Ríomhphost	Email	bord@pleanala.ie

64 Sráid Maoilbhríde	64 Marlborough Street
Baile Átha Cliath 1	Dublin 1
D01 V902	D01 V902

- (vii) a copy of requests (if any) to the applicant for further information relating to the application under appeal together with copies of reply and documents (if any) submitted in response to such requests,
- (viii) a copy of any written submissions or observations concerning the proposed development made to the planning authority,
- (ix) a copy of any notices to prescribed bodies/other authorities and any responses to same,
- (x) a copy of any exemption application/certificate within Part V of the 2000 Act, (as amended), applies,
- (xi) a copy of the minutes of any pre-planning meetings.

2. To ensure that the Board has a full and complete set of the material specified above and that it may proceed with full consideration of the appeal, please certify that the planning authority holds no further material relevant to the case coming within the above list of items by signing the certification on page 3 of this letter and returning the letter to the Board.

3. In addition to the documents mentioned above, please supply the following:- Particulars and relevant documents relating to previous decisions affecting the same site or relating to applications for similar development in near proximity. "History" documents should include;

- a) Certified Manager's Order,
- b) the site location, site layout maps, all plans and
- c) particulars and all internal reports.
- d) details of any extensions of time given in respect of previous decisions.

Copies of I-plan sheets are not adequate.

Where your records show that a decision was appealed to the Board, it would be helpful if you would indicate the Board's reference.

Submissions or observations by the planning authority.

4. As a party to the appeal you may, under section 129 of the 2000 Act, (as amended), make submissions or observations in writing to the Board in relation to the appeal within a **period of 4 weeks beginning** on the date of this letter. Any submissions or observations received by the Board outside of that period shall not be considered, and where none have been validly received, the Board may determine the appeal without further notice to you.

Contingency Submission

5. If the decision of your authority was to refuse permission, you should consider whether the authority wishes to make a contingency submission to the Board as regards appropriate conditions which, in its view, should be attached to a grant of permission should the Board decide to make such a grant. In particular, your authority may wish to comment on appropriate conditions which might be attached to a permission in accordance with section 48 and/or 49 of the 2000 Planning Act (Development / Supplementary Development Contributions) including any special condition which might be appropriate

Teil
Glao Áitiúil
Facs
Láithreán Gréasáin
Ríomhphost

Tel
LoCall
Fax
Website
Email

(01) 858 8100
1800 275 175
(01) 872 2684
www.pleanala.ie
bord@pleanala.ie

64 Sráid Maoilbhríde
Baile Átha Cliath 1
D01 V902

64 Marlborough Street
Dublin 1
D01 V902

Farry Town Planning Ltd.

Suite 180
28 South Frederick Street
Dublin 2

Phone (01) 677 8180
Mobile 087 288 7311
vincentfarry@gmail.com

9 January 2023

The Secretary
An Bord Pleanála
64 Marlborough Street
Dublin 1

AN BORD PLEANÁLA	
LDG- <u>060305-23</u>	
ABP- _____	
09 JAN 2023	
Fee: € <u>1500</u>	Type: <u>City</u>
Time: <u>13:01</u>	By: <u>hwd</u>

RESIDENTIAL AND EQUINE PROPOSAL AT REDGAP RATHCOOLE CO. DUBLIN SOUTH DUBLIN COUNTY COUNCIL REGISTER REFERENCE NUMBER SD22A/0402

Dear Sir

We refer to the above proposal and we confirm that we act for the applicant for planning permission, Pearse McKiernan of Hillcrest House, Crockaunadreenagh Road, Redgap, Rathcoole, County Dublin.

1. Planning Appeal

We hereby lodge a first party appeal against the decision of South Dublin County Council to refuse permission for a proposal which is described on Chief Executive Order ref. no. PR/1555/22 as follows:

'Proposed 3-bedroom dwelling (233.6sqm), single storey. Installation of a packaged wastewater sewage treatment system and polishing filter, stormwater harvesting tank and soakaways, well, new vehicular access, landscaping and ancillary site works, all in association with equine business. Crockaunadreenagh Road, Redgap, Rathcoole, Dublin'.

We enclose herewith a copy of our planning report which accompanied this application and we invite the Board to treat this submission as forming part of our appeal. This document describes the site and its environs (pp. 6-8), traces the history of this land, including a previous grant of permission by An Bord Pleanála for a dwelling on this site, along with other relevant decisions (pp. 8-15), identifies the policies which relate to proposals of this type (pp.15-22) and shows, with reference to a previous application for a similar proposal on this land, that there are no objections based on land-use, the principle of equine activity, the concept of residential development, the site layout, the scale of the dwelling, visual amenity, environmental issues or the water, drainage and equine waste arrangements.

Before discussing the current reasons for refusal, the Planning Authority has accepted that this overall holding can be used for equine purposes, that a dwelling is listed as 'open for consideration' on this land under the RU zoning objective which applies, that the site layout is appropriate, that the scale of the house is satisfactory, that the proposal is visually acceptable as the building 'would not be located on a ridge line and would uses the natural slope of the site....' and that the engineering arrangements comply with the relevant requirements¹. Although the Report of the Planning Officer expressed a reservation regarding one particular design element on the proposed dwelling², this has been removed.

It is immediately apparent that there is much agreement between the applicant and the Local Authority and that our appeal should turn on the issues which have been marshalled in the reasons for refusal.

¹ These quotations are from the Report of the Planning Officer in reg. SD21A/0073.

² A barrel-vaulted roof feature.

2. Background

Application reg. SD22A/0402 comprises a repeat submission, following the Council's refusal of permission for a strikingly similar proposal under reg. SD21A/0073, which was opposed by the Local Authority for four reasons; these concerns comprise the same objections as those which are now tabled. Indeed, it would appear that the current reasons for refusal are more verbose than those which were previously issued and this change seeks to make it more difficult for An Bord Pleanala to reverse the Council's current decision and does not reflect the fact that the proposal is actually more harmful.

In this regard, the development for which permission is now sought is not materially dissimilar to a residential and equine proposal which was recently advanced in application reg. SD21A/0009 and which, although resisted by the Council, was permitted by the Board under ref. ABP-309969. We submit that An Bord Pleanala should reach the same conclusion when determining the present appeal.

3. Second Reason for Refusal - Rural Housing Policy

(i) Introduction

The third reason for refusal indicates that the applicant does not pass the rural housing test, even though his longstanding family home and the land on which he currently works, with horses, are beside the appeal site. The manner in which Pearse McKiernan complies with adopted policy is set out at s.8(1)(b) of our original report, which is entitled '*Compliance on the Basis of Residency*' and at s.8(1)(c) thereof, which is headed '*Equine Employment*'. We invite the Board to take these submissions, along with the supporting papers which are presented in appendices A-KK, into account.

(ii) Equine Work

We consider that it is apparent from the Report of the Planning Officer that the Council candidly acknowledges Pearse McKiernan's links with this rural area ('*they have shown some local ties to the area*') and that its objection on rural housing policy grounds is not based either on the claim that the applicant hails from elsewhere, or that he does not work with horses on the McKiernan family holding.

Instead, the Report of the Planning Officer concludes that the appellant fails to satisfy the rural housing test on two grounds, the first of which suggests that he should remain living with his parents for all time, with the second indicating that he could purchase a house elsewhere and breed horses remotely:

'The strongest local tie relates to the equine business, but, the applicant has not satisfactorily demonstrated how this business cannot be attended to from the house already associated with the lands, particularly as there is urban housing options available a few minutes drive from the site in Rathcoole. As such, the proposed development would materially contravene the objectives of the Development Plan and would lead to demands for the uneconomic provision of further public services and facilities in this rural area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.'

At no stage does the Council's assessment of this application suggest that the appellant does not work with horses, that his family does not own an extensive landholding, that his business plan is not authentic or that he does not qualify for a new rural dwelling for some other more nebulous reason(s).

(iii) Access to Parental Home

No part of local, regional or national planning policy states that an individual who satisfies the rural housing eligibility criteria should remain living in a nearby family dwelling; these provisions instead entitle qualifying candidates to their own home in the locale where their accommodation requirement arises and this point is beyond dispute. Indeed, most one-off dwellings are permitted for the sons and daughters of nearby householders and we do not consider that the proximity of a family home would automatically disentitle an applicant from securing consent for accommodation in such circumstances.

Although the Board denied permission for two new dwellings at Tuckmilltown Straffan Co Kildare under reg. nos. PL09.218974 and PL09.218975, its reasons for doing so did not relate to the proximity of the applicants' parental home, about 200 metres distant, to those appeal sites. Equally, in ref. PL09.126284, An Bord Pleanála permitted a one-off house at Castlewarden Co. Kildare for an individual whose family home was located directly opposite that land and when doing so, the Board did not pause to consider whether that individual should remain living with his parents for all time.

This third reason for refusal suggests that Mr. McKiernan cannot build a house on this extensive family holding, on which he grew up, where he lives and works on the equestrian operation and where he plans to operate his own independent equine facility. To the degree that the third reason for refusal seems to suggest that the applicant should remain living in his parental home for all time, (*'the applicant has not demonstrated how this business cannot be attended to from the house already associated with the lands'*), we do not believe that this approach accords with adopted planning policy.

Although the Report of the Planning Officer criticises the fact that *'the applicant has not demonstrated how this business cannot be attended to from the house already associated with the lands'*, this statement overlooks the fact that the adjacent dwelling is not in the ownership or control of the appellant and that Pearse McKiernan seeks his own farmhouse, in which he can accommodate his own family and rear his own horses. We are unaware of any precedent cases in which a farmer's son or daughter, who are already working a family farm, were deemed ineligible for a house on that landholding because they, as married adults, must remain living with their parents and we take this opportunity to reproduce footnote no. 13 (which is on p. 31 of our original report), which states that:

'The applicant has also recently wed and requires his own marital home, which is separate from his parent's house. We are unaware of any planning principle which requires a married couple to live in a parental dwelling...'

It is somewhat strange that the Local Authority should have opposed the present proposal on the basis of the proximity of the McKiernan home, in circumstances where it granted permission for a new rural dwelling elsewhere within the jurisdiction of South Dublin County Council under reg. SD20A/0279. Indeed, we observe how the same Senior Ex. Planner on that separate occasion appears to have reached markedly different conclusions to the present assessment, in that the assessment of reg. SD20A/0279 accepted that the landowner in that case needed to live beside her equine centre and did not object to that new dwelling on the basis that this previous applicant could remain living in her family dwelling:

'...the applicant has overcome the reason for refusal, and it is considered that they fulfil the criteria for policy H22 in the context of this site...having demonstrated the applicant's compliance with criteria for local connection and local need...in particular the criteria on housing in 'RU' zoned areas, and would therefore accord with proper planning and sustained development'.

(iv) Alternative Accommodation Elsewhere

Whilst the Report of the Planning Officer suggests that Mr. McKiernan should live in Saggart, Rathcoole or elsewhere, this does not comply with planning practice, which otherwise accepts the need for rural accommodation for farmers. In appeal ref. PL06F.125241 the Report of the Inspector stated *'The appellant is currently farming his father's land located 3 – 4 km away...I would consider that the substantive issue why the applicant needs to locate on a site remote from the ...land ...which he is engaged in farming...'* and in appeal reference no. PL27.232284 the Board's assessment stated:

'I agree...that the applicant, being a farrier, cannot live and practice his profession in a normal settlement and consequently needs to reside in a rural area. The subject site, on the borders of Wicklow, is in close proximity to County Kildare which is described as the "home of racing" in Ireland...a farrier is an intrinsic part of the rural community and because of the nature of his business is required to reside in a rural area...the applicant is also involved in horse breeding...'

I am of the opinion that the applicant requires to live in a rural area and is a bona fide case for a one-off house in the countryside...I take the view that the applicant qualifies for a one-off house in this rural area and conforms with the Sustainable Rural Housing Guidelines as a person working full time or part time in a rural area and also qualifies under the Council Policy SS9 Category 15'.

The need for on-site housing was also endorsed by the Council in a myriad of cases, a small selection of which are identified on pp. 29-32 of our original report, including the recent decision of An Bord Pleanala in the case of appeal ref. no. PL06S.309969. It is axiomatic that persons with 24-hour-per-day, 7-day-per-week responsibility for horses must be immediately on-hand to care for their animals and no part of planning policy suggests that such applicants should be directed into a nearby town. Any conclusion, to the effect that such farmers cannot qualify for a home beside their flock or stock would be materially inconsistent with over fifty years of town planning decisions in this country.

3

Indeed, even in circumstances where a farmer had already owned on-site accommodation, the Board has granted permission for new housing and we draw attention to the decision in the case of appeal ref. PL09.243417, in which An Bord Pleanala permitted a one-off dwelling on the 100-acre Rheindross Stud Farm Donadea Co. Kildare (which is similarly-sized to the McKiernan holding) and did not suggest that the new staff member should co-habit with the applicant in the adjacent house).

(v) Overview

It is immediately apparent from the appendices to our original report that Mr. Pearse McKiernan was raised on this family property, in the neighbouring house, that he works this land and that his personal circumstances have recently changed, with the effect that he now requires his own marital home. These personal and occupational traits are not in doubt and indeed, have been accepted by the Council.

We are not persuaded by the Local Authority's approach in this case. The argument, that a qualifying candidate should remain living in another person's house, or should otherwise relocate to a town, is wholly inconsistent with both adopted planning policy, in *Sustainable Rural Housing Guidelines* and in the *Development Plan* and in a plethora of planning decisions stretching back one-half-of-a-century.

We respectfully invite An Bord Pleanala to concur with the conclusion which is contained within page no. 22 of the Report of the Planning Officer on this present occasion, which is reproduced as follows³:

'The applicant has provided details to show that they are a native of the area, and the owner and manager of an equine business dealing in the ownership, breeding and training of horses to use in racing. It is accepted that the applicant has close family ties with family and the rural community in the vicinity of the site'.

4. Third Reason for Refusal - Rural Housing Policy

(i) Introduction

The third reason for refusal, which is linked to the rural housing policy, is difficult to follow in that it refers to the *Regional Spatial and Economic Strategy 2019 - 2025*, the *Settlement Strategy policy for the Eastern & Midlands Region* and the core strategy of the *County Development Plan*. However, aside from the fact that this text does not actually identify any specific policy which is being breached, it then concludes that the real issue at stake comprises the number of existing dwellings in this area:

4

³ Although we have scoured the file papers in application reg. SD20A/0279, we can provide no justification for the County Council, or the same Case Officer, reason a different approach on the present proposal

'Having regard to the above, the proposed development would represent the proliferation of further one-off housing in the Dublin Metropolitan Area and would prejudice the achievement of regional settlement strategy policy for the Eastern & Midlands Region'.

(ii) Land Use Zoning

The Report of the Planning Officer identifies the controls which apply to new housing in this area and accepts that the subject site is located in one of the more banal parts of the countryside (at p. 17-18):

'The site is subject to land-use zoning objective 'RU' – 'To protect and improve Rural Amenity...The use class 'Residential' is listed as 'open for consideration' under this zoning objective...'

In view of section 15(1) of the Planning and Development Act, 2000 (as amended), which requires steps for the achievement of a zoning objective to be undertaken, we submit that this designation counterbalances and outweighs any strategic policy especially in the circumstances of the current case.

The County Council's justification for this present objection is set out at pp. 19-20 of the Report of the Planning Officer and although the final reason for refusal refers to the *'proliferation of further one-off housing'* in this area, no part of this internal assessment actually quantifies the density of rural residential development in this locale, or otherwise explains why this part of the South County Dublin countryside has reached, or has passed, a tipping-point in terms of its ability to absorb this dwelling.

The Report of the Planning Officer in ref. SD21A/0009, which later evolved into appeal ref. ABP-309969), noted that *'There has also been no analysis done on existing houses in the area or the proximity to existing settlements, with examples such as Rathcoole...'* and it would appear that this third reason for refusal is equally unproven, in a scientific content. Indeed, the Board may also wish to use its own decision in appeal ref. PL09.241689, a case in which rural residential density was pivotal, as a barometer guiding the acceptability of the proposed dwelling in this particular location.

(iii) Submission

The Council's final reason for refusal, highlights the *Regional Spatial and Economic Strategy 2019 - 2025* and essentially paraphrases the provision at RPO 4.79 which, although referring to the need to identify and provide policies that recognise the contribution that small towns, villages and rural areas contribute to social and economic wellbeing, also seeks to support and protect rural economies such as valuable agricultural lands to ensure sustainable food supply, to protect the value and character of open countryside and to support the diversification of rural economies to create additional jobs and maximise opportunities. In doing so, however, the Council has completely overlooked the clause at RPO 4.80 which is clearly relevant to the proposed development and which is reproduced as follows:

'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'.

It is our opinion that a full-time horse breeder, with personal and direct responsibility for animals in his care and control, has a definable need to live on the land which he is farming and we draw support for this approach from the Board's decision in the case of appeal ref. PL06S.309969. It is axiomatic that An Bord Pleanála would not have granted planning permission for this separate horse breeder if it did not believe that an applicant who is engaged in this type of work did not satisfy s. 4.80 of RSES.

The Report of the Inspector on that occasion did not specifically address the issue of compliance with regional planning policy, although this analysis noted, in respect of other national and local provisions:

'Policies H20, H21, and H22, and Circular Letter SP 5/08, all relate to rural housing. I consider that, to oversee the full-time operation of a sport horse business such as that proposed, a house would be a reasonable element of the development'.

5. First Reason for Refusal – Road Safety

We attach a technical submission in relation to the County Council's safety concerns and we invite An Bord Pleanála to consider the following planning-related points when considering this issue.

(i) Access Arrangements

The first reason for refusal raises two concerns, both of which relate to the ability of this area to accommodate the additional traffic which would result from the proposed dwelling and neither of which suggest that the actual access arrangements are unacceptable, in themselves. We observe, however, how the internal memorandum from the Roads Dept. criticises the architectural drawing, not on the basis of sightlines and / or visibility from the access *per se* but in relation to hedgerow removal:

'Sightline drawing

This drawing is unclear. More detail is required regarding the existing hedgerows. The visibility splay must be set back min 2.4m from edge of carriageway and this must be clearly illustrated, as must the splay triangle in either direction with clear distances shown in both directions'.

(ii) Road Conditions

To the degree that the first clause in this reason for refusal refers to the location of the site '*on a substandard rural road network which is narrow in width and has poor vertical and horizontal alignment*', with the second section therein alluding to the fact that the land is positioned '*on a laneway substandard in width and alignment and without adequate facilities for pedestrians and vulnerable road users*', the Council's main concern relates, not to the entrance arrangements for the site *per se*, but to whether the local road network can accommodate the traffic associated with this development.

Aside from the fact that we disagree with this conclusion, we note that there appears to be a pattern or a trend emanating from the decisions by South Dublin County Council in relation to new housing in the countryside, to the effect that the rural road network surrounding the site cannot accommodate the additional traffic which would be generated by that development. In this regard, we invite the Planning Authority to observe how its recent decisions in the case of reg. nos. SD20A/0208 and SD21A/0009, both of which raised road safety concerns, were not endorsed by An Bord Pleanála⁴.

In the case of this latter development proposal, the Council's reason for refusal had stated as follows:

'The application site is located on a local roadway of narrow width and poor horizontal alignment, where vehicles have to give way when they meet another vehicle. The proposed development would result in an increase in vehicles accessing the site and an increase in the associated turning movements at the entrance to the site. The variety of vehicles that would be expected to visit a site of this nature would range from a car, car/jeep with horsebox, rigid horse lorry, up to HGV in size. This road is a relatively busy rural road during peak hours due to traffic which uses it to avoid the N7; it is rural in nature; it is substandard for the amount of traffic that uses it during peak times; and it is also without adequate facilities for pedestrians and other vulnerable road users. For the above reasons, the proposed development would endanger public safety by reason of traffic hazard'.

⁴ In the related planning appeals under Board ref. PL06S.308500 and PL06S.309969 respectively.

The Report of the Inspector, on appeal, had dismissed this approach, based on the following analysis:

I consider that the increase in vehicular movement as a result of the proposed development, as set out in the reason for refusal, is overstated. While there would obviously be an increase, I do not consider it would be such that it would have any significant impact on the carrying capacity of the public road, and where adequate sightlines exist. The reason for refusal also refers to the variety of vehicles accessing the site. The grounds of appeal imply that a four-wheel drive vehicle towing a horse box or carrier would generally be the type of larger vehicle accessing the site'.

We respectfully invite the Planning Authority, when considering the adequacy of the rural road network which surrounds the application site to acknowledge the direction of the High Court in *Wicklow County Council -v- Fortune (No. 2)*⁵, which envisages a certain degree of practicality when considering issues of road safety and which cautioned against the trend of planning authorities to reach unfounded opinions on safety, without actually scientifically identifying the bases for such concerns⁶:

It is true that the Council refused retention permission on the ground of the "narrow width and the poor alignment and unsurfaced nature of the road network" and this ground of objection was upheld by the Board on appeal, it cannot nonetheless be said that the entrance presents "a real and immediate traffic...hazard". ...some measure of realism must also enter the equation. Even though the lane leading to the site (which I found to be just over 4m. wide) was unsurfaced...it was otherwise in good condition. The volume of traffic using the lane is obviously small. The actual entrance to Ms. Fortune's site was nevertheless some 12m. wide and the view of the driver of any vehicle entering or exiting the site was not obscured in any significant way in either direction. While the planning specialist could doubtless discern the existence of a potential traffic hazard, the same could be said of virtually every country road and botharín in the entire county of Wicklow. If this were the test, the same objection could be levelled in respect of virtually every rural dweller in the county, nearly all of whose dwellings lead onto small country roads and lanes, many of them with even less room for manoeuvre and more restricted sight lines than I could discern in the present case. In these circumstances, one does not need to be a planning or traffic specialist to see that the site does not present a real and immediate traffic hazard...'

Based on our observations, the road onto which this site fronts carries very little traffic and that how the few motorists who travel along this route drive at a very slow speed. As the applicant would be forced to live elsewhere in the event of permission for the proposed house being refused, such trips will not be needed should this dwelling be built and, in this regard, the proposed development would entail substituting domestic journeys trips for equestrian trips, on which basis, the number of vehicles using Local Road L-6019 would not change notably if the applicant builds his own home on this site.

The picture which thus emerges is of a low-profile rural route which, although restrictive in physical character, accommodates few cars and of a development which will, in itself, not change the local traffic conditions, given that the applicant would otherwise be required to travel to and from this land, possibly several times per day, to care for horses in his care. Indeed, to the degree that speed is a critical factor in most serious and fatal accidents, the physical characteristics of this particular carriageway requires motorists to drive at a slow pace and this, combined with the forward visibility associated with the linear alignment of the road, would prevent any threat to public safety occurring.

The local roads which lead to the application site are rather lightly-trafficked, with the few motorists who negotiate their way through this area generally travelling at a relatively slow pace; furthermore, drivers egressing from the proposed site entrance along the access route which is identified in the engineering papers have adequate advance notice of oncoming motorists and indeed, such individuals must slow considerably when negotiating the nearby junction. As a result and applying the logic in the *Fortune* judgment (above), we do not consider that this arrangement would prejudice road safety.

⁵ *Wicklow County Council -v- Fortune (No. 2)* Neutral Citation: [2013] IEHC 255 High Court Record 2011 26 CA

⁶ This approach accords with *Damer-v-An Bord Pleanála*, in which Simons J. drew a distinction between a reasoning and a conclusion and stated that it was necessary for a decision-maker to explain the basis for any reasons for refusal.

6. Concluding Comment

The Council opposes this proposal on two primary grounds which relate to the applicant's qualification for a rural house under adopted policy and the effect of this development on road safety.

The Planning Authority actually accepts that Mr. McKiernan satisfies the eligibility criteria for one-off housing in the countryside but concludes that the appellant fails to satisfy adopted policy given the juxtaposition of the appeal site with the McKiernan family home. We disagree with the suggestion that a qualifying candidate should be disentitled to a house on family land in this area on such a basis.

Turning to road safety, the use of the subject site for equine purposes comprises exempted development and, given that this land is already used for such activities, the impact of this proposal on road safety should turn, not on the traffic characteristics of an equestrian development on this property, but on the few trips generated by the proposed single house. Moreover, as Mr. McKiernan would be forced to travel to and from this tract in the event of permission for a house being denied, these domestic journeys would simply replace such equine-related trips. In such circumstances, it is difficult to appreciate the manner in which this proposal, considered as one entity, would affect safety.

Yours faithfully



Farry Town Planning Ltd.

Oliver & Carmel Mc Kiernan
Hillcrest House
Redgap
Rathcoole
County Dublin
D24YF82

Re: Letter of Support – Planning Appeal to An Bord Pleanala

2nd January 2023

Dear Sir/Madam,

We are writing to give our consent and show our support to Pearse McKiernan our son. The proposed site is within the 8 Hectares of land that include horse stalls and agricultural service buildings. Pearse has leased the land from us for the purpose of developing his own stand-alone thoroughbred breeding establishment, McKiernan Equine. Pearse got married on the 10th September 2022 and is turning 40 years of age this year and we are concerned and disappointed with the second refusal given by South Dublin County Council (SDCC).

To date Pearse has spent over €30,000 submitting both applications which have been refused. We are very aware that this is the cost/risk involved for everyone submitting applications. However, we feel aggrieved for Pearse as the reasons for refusal seem unfair.

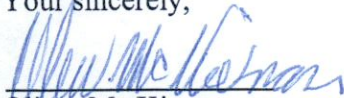
It is SDCC planner's opinion the business should be attended to from our family home. This means that Pearse and his wife would raise their future family in our home so that Pearse could look after the business. We find this totally unacceptable that our son would be forced to live with his parents and that we would be required to live with our future grandchildren.

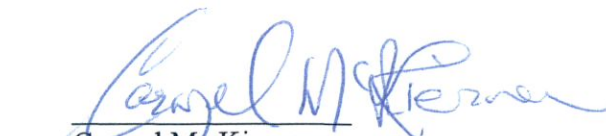
We also want to clarify that our home and lands are in the ownership of Oliver and Carmel McKiernan and not just Carmel McKiernan as stated on page 1 of the CEO reports. These reports also fail to mention in the planning history that the site had an existing family home on it since the early 20th century. The house was only removed from the land as a condition of planning which was received in 1983, however the new property was never built. If Pearse was granted permission this would allow him to manage his business and allow him to continue to support us into the future to live independently.

Pearse is well equipped to run his own stand-alone breeding business, and this has been well documented within Vincent Farry's planning report. This business, like any other livestock farming business, requires the presence of a farmer. The business would require Pearse be in close proximity to the horses as shown in the site layout plans. He will have pedestrian access to the stables etc. within 50 metres of the proposed property which is very important.

Pearse is well used to being on call 24/7 in case of emergencies and has often been required to check on mares in season, young foals just born, mares foaling, sick or injured horses which can be quarantined at any given time. Making sure all horses are always safe and secure is his priority. Furthermore, there are times when horses will arrive to the yard at night or leave at night to travel long distances in Ireland or abroad for sales. This will be no different for his new business.

Your sincerely,


Oliver Mc Kiernan


Carmel Mc Kiernan

The Secretary

An Bord Pleanála
64 Marlborough St,
Dublin 1,
D01 V902

03 January 2023

Reference: P210304

To Whom it May Concern

Re: Proposed Residential Development at Crockaunadreenagh Road, Redgap, Rathcoole, County Dublin.

It is important to highlight that South Dublin County Council (SDCC) repeated the same refusal points as the first application in relation to the roads section.

However, the latest report by the Roads Section of SDCC would indicate that the refusal points on the second application only relate to the alternative access (along Redgap Road). There is no reference to the preferred access on Crockaunadreenagh Road. The documentation below was submitted with the latest application (these documents were not submitted with the first application) and SDCC have not commented on or acknowledged this.

This includes a Stage 1 Roads Safety Audit (the recommendations of which were all accepted and implemented in a plan), a Traffic and Transport Report, a plan showing the existing and additional passing bays requested by SDCC along Crockaunadreenagh Road and a speed survey. This information is discussed in more detail below.

Please find below my response to the reason for refusal relating to Reg. Ref. PR/1555/22. The reason for refusal is outlined in italics with my response below.

1. The proposed development would be located on a substandard rural road network which is narrow in width and has poor vertical and horizontal alignment. The road lacks pedestrian, public lighting and drainage facilities and is saturated with one-off houses.

Having regard to this, the proposed development would endanger public safety by reason of traffic hazard. The road network in the area is incapable of catering for the continuation of ribbon development. The proposed development would be contrary to the proper planning and sustainable development of the area.

A Traffic and Transport Statement accompanied the latest application refused by SDCC. This report clearly addresses the previous reasons for refusal. The structure of the report is done in Sections 1 to 7 with appendices A & B. Section 1 gives the main objectives and methodology (pg. 5-6), Section 2 considers the location of the site and existing/future transport provision including road safety data (pg. 7-11), Section 3 discusses the proposed development site access (pg. 12-15), Section 4 considers the traffic generation and potential impacts of the development (pg. 16-17), Section 5 considers the construction impact (pg. 18-23), Section 6 considers the road safety impact of the proposed development (pg. 24), Section 7 gives a summary of the proposed development and a conclusion which states how the previous refusal points have been addressed (pg. 25-26). Appendix A is the Stage 1 Road Safety Audit and Appendix B is the speed survey.

A Stage 1 Road Safety Audit (included as Appendix A in the Traffic and Transport Statement) was carried out by the Applicant by an approved Road Safety Auditor.

This recommendation has been fully accepted by the Applicant. The site access, as per the original application, can be used as a pull in bay. Refer to Pinnacle Engineering Drawing No. P210304-PIN-XX-DR-D-0005-S1 for details

Additional passing bays have been provided as requested by South Dublin County Council. Refer to the originally submitted Pinnacle Engineering Drawing No. P210304-PIN-XX-DR-D-0006-S1 for details.

All items raised in the RSA have been addressed. Refer to the originally submitted Designer's Response and Pinnacle Engineering Drawing No. P210304-PIN-XX-DR-D-0005-S1 for details.

The following additions are included in this application:

- The levels are such that there is no risk that drivers exiting from the site may lack traction, particularly in frosty conditions
- Levels have been designed to ensure that all drainage falls internally and not on to the road
- The culvert under the access has been extended either side of the access
- The access will be used as both an access and a passing bay on Crockaunadreenagh Road

All issues raised in the Road Safety Audit were addressed through the Designer's Response. Refer to the final Road Safety Audit for details.

2. The generation of additional traffic on a laneway substandard in width and alignment and without adequate facilities for pedestrians and vulnerable road users would endanger public safety by reason of a traffic hazard.

The development is unlikely to produce any new trips on the local network. All trips to/from the proposed development will be diverted trips. i.e., the Applicant moving from family home on Crockaunadreenagh Road to a site also located Crockaunadreenagh Road.

In essence, these trips will already be on the network and will not impact on local junctions. Therefore, there will be no additional queuing or delay as a result of the proposed development.

This traffic assessment has confirmed that the proposed access arrangements on Crockaunadreenagh Road would adequately accommodate anticipated levels of traffic visitation and that as such the traffic generated by the development would have no material adverse impact on the operation of the local road network.

The site had the benefit of an existing grant of permission for a 5-bedroom residence which lapsed and was conditioned to remove the existing property on the site.

This application relates to a 3-bedroom house. It will not result in any additional traffic on Crockaunadreenagh Road as the Applicant will be moving from the family home, where he currently lives, c.160m east of the application site.

Should the application be refused, and the Applicant will be forced to live away from their equine business which is located adjacent to the proposed development. This will result in the creation of new trips on Crockaunadreenagh Road to their equine business from their new place of residence to facilitate the upkeep of their equine business and livestock.

The Applicant is willing to undertake improvements locally on Crockaunadreenagh Road to improve road safety as per the recommendations of the Road Safety Audit. Subject to a site survey, additional pull in bays, to facilitate the passing of vehicles, will be installed at the proposed access and at two other locations on Crockaunadreenagh Road.

There were a number of issues raised by South Dublin County Council in their decision to refuse permission for the proposed development.

The issue raised relating to the highways are summarised below:

The general width of the Crockaunadreenagh Road and its poor horizontal and vertical alignment is such that two vehicles cannot pass each other safely. An intensification of traffic on this road will lead to increased traffic hazard.

The new development will result in diversion of an existing trips originating c. 160m east of the development on Crockaunadreenagh Road.

Adequate sight lines, based on speed surveys and the recommendations of a Road Safety Audit have been provided. A pull bay at the proposed site access, as recommended by the Road Safety Audit, in addition to the pull in bays requested by South Dublin County Council.

It is therefore concluded that the development will not increase the traffic hazard.

Additional comments were made by the Roads Section of South Dublin County Council. These comments are outlined in Italics with my response below.

Sightline drawing

This drawing is unclear. More detail is required regarding the existing hedgerows. The visibility splay must be set back min 2.4m from edge of carriageway and this must be clearly illustrated, as must the splay triangle in either direction with clear distances shown in both directions.

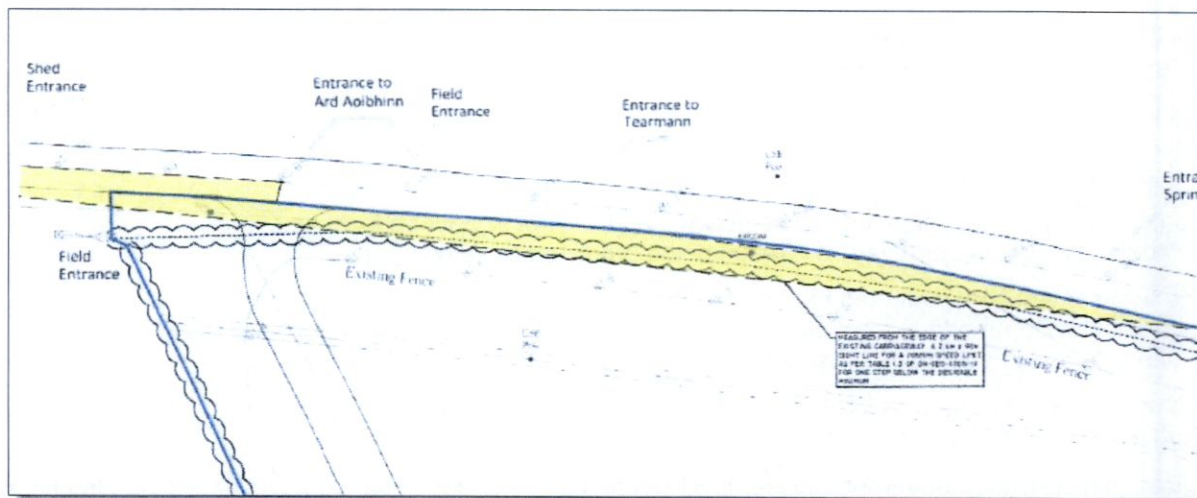


Figure 1 Extract from SDCC Roads Section Report

Refer to Pinnacle Engineering Drawing No. P210304-PIN-XX-DR-D-0007-S1-P06 now submitted to an Bord Pleanála which illustrates the following:

- The 2.4m set back of the visibility splay.
- A dimensioned 90m visibility envelope
- The extent of hedgerows to be kept, removed or replanted to accommodate the visibility splay

The report by the Roads Section of SDCC exclusively refers to the alternative access only with no reference to the preferred access on Crockaunadreenagh Road.

Crockaunadreenagh Road is characterized with lower speeds and lower traffic volumes when compared the Redgap Road. Redgap Road provides a link between the N7 and Saggart/Citywest/Tallaght and the N81 and provides access to a number of houses. It is characterized by a wider road reservation and high traffic volumes when compared to Crockaunadreenagh Road as a result.

In the first instance, the Applicant is seeking access to the development via Crockaunadreenagh Road where sight lines in accordance with the relevant design standards can be achieved. The Applicant has also provided pass by bays to allow vehicles to pass easier.

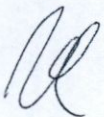
Should Crockaunadreenagh Road not be acceptable, the Applicant has suggested Redgap Road, as discussed above, as an alternative access.

The options presented in Pinnacle Engineering Drawing No. P210304-PIN-XX-DR-D-0007-S1-P06 ensures that vehicles can enter/exit the development safely taking into account the prevailing conditions. The design has ensured that drivers approaching the junction from the development have unobstructed visibility of the junction bellmouth as per Figure 5.15b of DN-GEO-03060. This allows drivers time to slow down safely, and stop should the need arise.

On the major arm of the junction, there is sufficient SSD for the design speed for approaching vehicles to see a car turning into or emerging from the development. Again, this allows drivers time to slow down safely, and stop should the need arise.

Accordingly, there are no reasons in relation to traffic and transportation aspects why this scheme should not be granted planning permission. Should you have any questions or comments on the above, please do not hesitate to contact me.

Yours sincerely,



Ronan Kearns
Pinnacle Consulting Engineers
ronan.kearns@iepinnacle.com
+353 1 2311045

Encl.: P210304-PIN-XX-DR-D-0007-S1-P06

PINNACLE

CONSULTING ENGINEERS

Farry Town Planning Ltd.

Suite 180
28 South Frederick Street
Dublin 2

Phone (01) 677 8180
Mobile 087 288 7311
vincentfarry@gmail.com

21 October 2022

Senior Executive Officer
Planning Department
South Dublin County Council
County Hall
Tallaght
Dublin 24

RESIDENTIAL AND EQUINE PROPOSAL AT REDGAP RATHCOOLE CO. DUBLIN

Dear Sir or Madam

We refer to the above and we confirm that we act for the applicant for permission, Pearse McKiernan.

Mr. McKiernan seeks planning permission for a development which has been publicised as follows:

'Proposed erection of a three-bedroom dwelling house (233.6 sqm), containing a single storey, installation of a packaged wastewater sewage treatment system and polishing filter, stormwater harvesting tank and soakaways, well, new vehicular access, landscaping and ancillary site works, all in association with adjoining equine yard at Hillcrest House, Crockaunadreenagh Road Redgap, Rathcoole, Co. Dublin'.

This comprises a repeat submission following a refusal of permission for a strikingly similar house in application reg. ref. no. SD21A/0073 which was opposed for four reasons, which we discuss below.

Before discussing these concerns, we note how the Planning Authority accepted that this overall holding can be used for equine purposes, that a dwelling is listed as '*open for consideration*' on this land under the RU zoning objective which applies, that the site layout is appropriate, that the scale of the house is satisfactory, that the proposal is visually acceptable as the building '*would not be located on a ridgeline and would uses the natural slope of the site....*' and that the engineering arrangements comply with the relevant requirements. Although the Report of the Planning Officer expressed a reservation regarding one particular design element on the proposed dwelling, this has been removed.

The first and second reasons for refusal in reg. SD21A/0073 raised traffic and transportation issues with both of these concerns, which overlap considerably, querying the ability of the local road network to accommodate this development. Given that the use of this land for equestrian activities has been ongoing for a significant period and given that such operations do not need permission under s. 4(1)(a) of the Planning and Development Act, 2000 (as amended), the key question which arises comprises whether this road network can cater for the traffic movements associated with the proposed dwelling.

The applicant, who has been involved in this family equine business for many years would be forced to commute to and from this property in the event of permission being denied and it is immediately apparent that some of the domestic trips which are associated with this new house would replace the equine journeys which would otherwise be necessary, from elsewhere. In such circumstances and having regard to the lightly-trafficked nature of carriageways in this area. We do not believe that public safety would be prejudiced as a result of this farmhouse being constructed on this landholding.

The third and fourth reasons for refusal in application reg. ref. SD21A/0073 also overlap to the degree that they both suggest that Pearse McKiernan cannot build a house on the extensive McKiernan family landholding, on which he grew up, where he lives and works on his family equestrian operation and where he plans to operate his own independent equine facility. To the degree that the third reason for refusal seems to suggest that the applicant should remain living in his parental home for all time ('the applicant has not demonstrated how this business cannot be attended to from the house already associated with the lands'), we do not believe that this approach accords with adopted planning policy.

Whilst this objection suggests that Pearse McKiernan should live in Saggart, Rathcoole or elsewhere, this approach does not comply with planning practice, which otherwise accepts the need for house accommodation for farmers. In appeal ref. PL06F.125241 the Report of the Inspector stated 'The appellant is currently farming his father's land located 3 – 4 km away...I would consider that the substantive issue why the applicant needs to locate on a site remote from the ...land ...which he is engaged in farming...' and in appeal ref. no. PL27.232284 the Board's assessment stated as follows:

'I agree...that the applicant, being a farrier, cannot live and practice his profession in a normal settlement and consequently needs to reside in a rural area. The subject site, on the borders of Wicklow, is in close proximity to County Kildare which is described as the "home of racing" in Ireland...a farrier is an intrinsic part of the rural community and because of the nature of his business is required to reside in a rural area...the applicant is also involved in horse breeding... I am of the opinion that the applicant requires to live in a rural area and is a bona fide case for a one-off house in the countryside...I take the view that the applicant qualifies for a one-off house in this rural area and conforms with the Sustainable Rural Housing Guidelines as a person working full time or part time in a rural area and also qualifies under the Council Policy SS9 Category 15'.

Please contact the undersigned should you have any queries or concerns regarding this submission.

Yours faithfully



Farry Town Planning Ltd.

Farry Town Planning Ltd.

Suite 180
28 South Frederick Street
Dublin 2

Phone (01) 677 8180
Mobile 087 288 7311
vincentfarry@gmail.com

REPORT IN RELATION TO A RESIDENTIAL AND EQUESTRIAN PROPOSAL AT REDGAP RATHCOOLE CO. DUBLIN

**PLANNING SUBMISSION PREPARED BY
FARRY TOWN PLANNING LTD.
ON BEHALF OF
MR. PEARSE MCKIERNAN**

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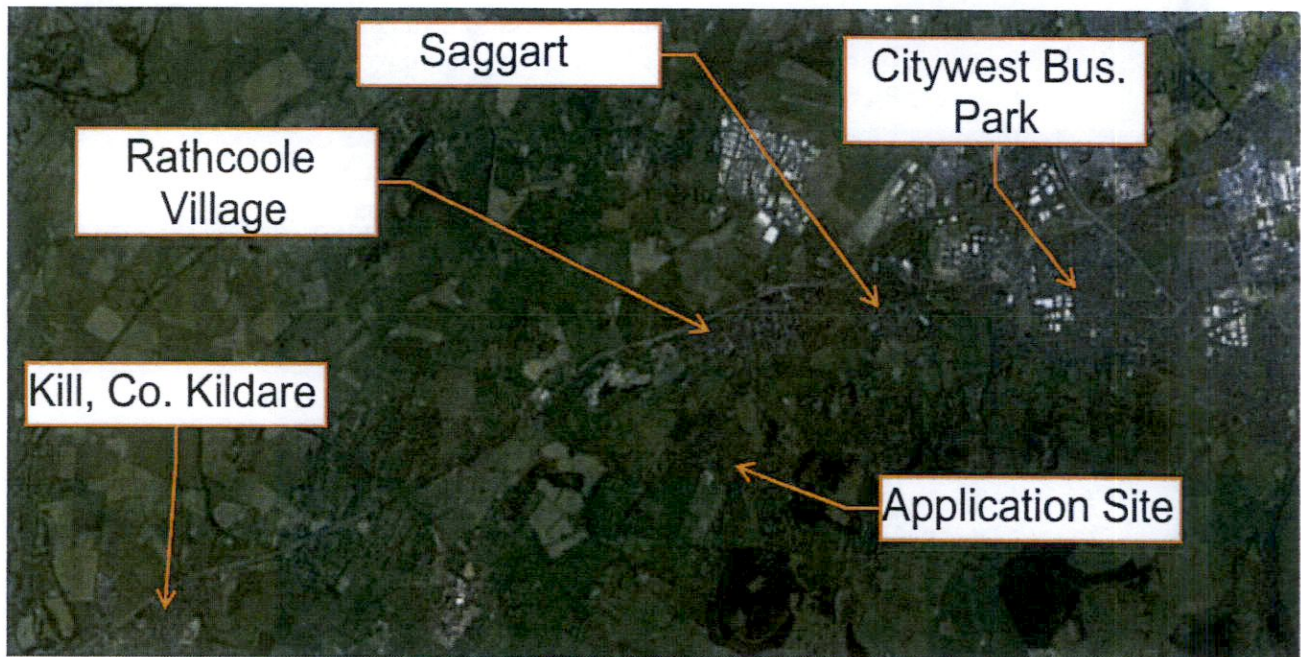
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1. Introduction

This report relates to an equine and domestic proposal at Redgap, Rathcoole, Co. Dublin and has been drafted on behalf of the applicant, Pearse McKiernan, for submission to the Council. Mr. McKiernan seeks to operate an equine business on this site, to be run from a new home thereon and we submit that this overall proposal accords with the proper planning and sustainable development of this area.

2. The Site and its Surroundings

The application site comprises a regularly-shaped tract which covers an area of circa 0.675 hectares (or 1.67 acres) and which is about 1.99 km (1.24 miles) to the south of Rathcoole Village, roughly 2.82 km (1.75 miles) to the south-west of Saggart, approximately 7.83 km (4.86 miles) to the east of Kill Village, Co. Kildare and 2.6 km (1.6 miles) from the boundary which separates counties Kildare and Dublin. Importantly, this particular tract is also located about 3.50 km (2.17 miles) to the east of Farmersvale, County Dublin, which accommodates the appeal site of reg. ref. no. ABP-309969-21¹.



Aerial Image 1: The subject site is located in a rural area in south-west Co. Dublin.

This overall tract of land, although close to a number of town centres and villages in counties Dublin and Kildare, as well as being proximate to the capital city, is situated in an area of open countryside and in a location which is characterised by farmland and occasional one-off rural houses. In this regard and as depicted in a number of photographs which are set out overleaf and throughout this report generally, the application site comprises a banal parcel of insignificant farmland which contains no mature stands of specimen trees or other notable vegetation, no rock outcrops, mountains or cliff edges, no scenic rivers or lakes, no protected structures, archaeological artefacts or national monuments and no items of environmental, town planning or environmental importance whatsoever.

The property to which this proposal relates fronts directly onto Local Road L-6019, which comprises a properly-formed and constructed rural route which, not linking two town centres, carries primarily agricultural and local residential traffic. The McKiernan farm benefits from an existing entrance which is depicted in photograph 11 on page 33 and which is on a linear stretch of road as illustrated in the images set out in photograph nos. 12 and 13 which on page no. 34 of this town planning submission².

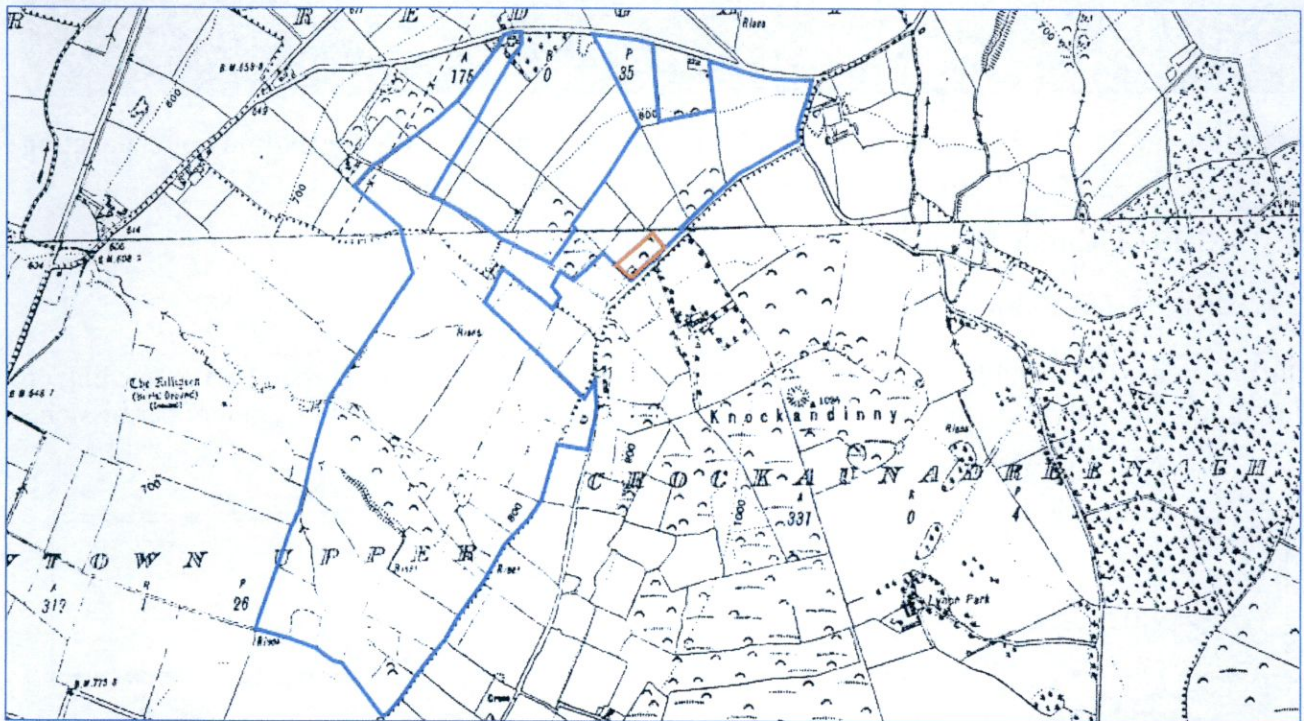
¹ South Dublin County Council reg. SD21A/0009.

² The present application proposes a new entrance onto this rural route.



Map 1: The residential site comprises a regularly-shaped tract of 0.675 ha. (1.67 acres)³.

This site itself accommodates no development of any significance and essentially consists of a tract of somewhat underutilised agricultural property, although it forms part of a much larger holding in McKiernan family ownership. The juxtaposition of the subject land within this overall property⁴ is depicted in Map. 2 below, with the landownership folio documents being set out within Appendix A.



Map 2: The juxtaposition of the application site within the McKiernan family holding.

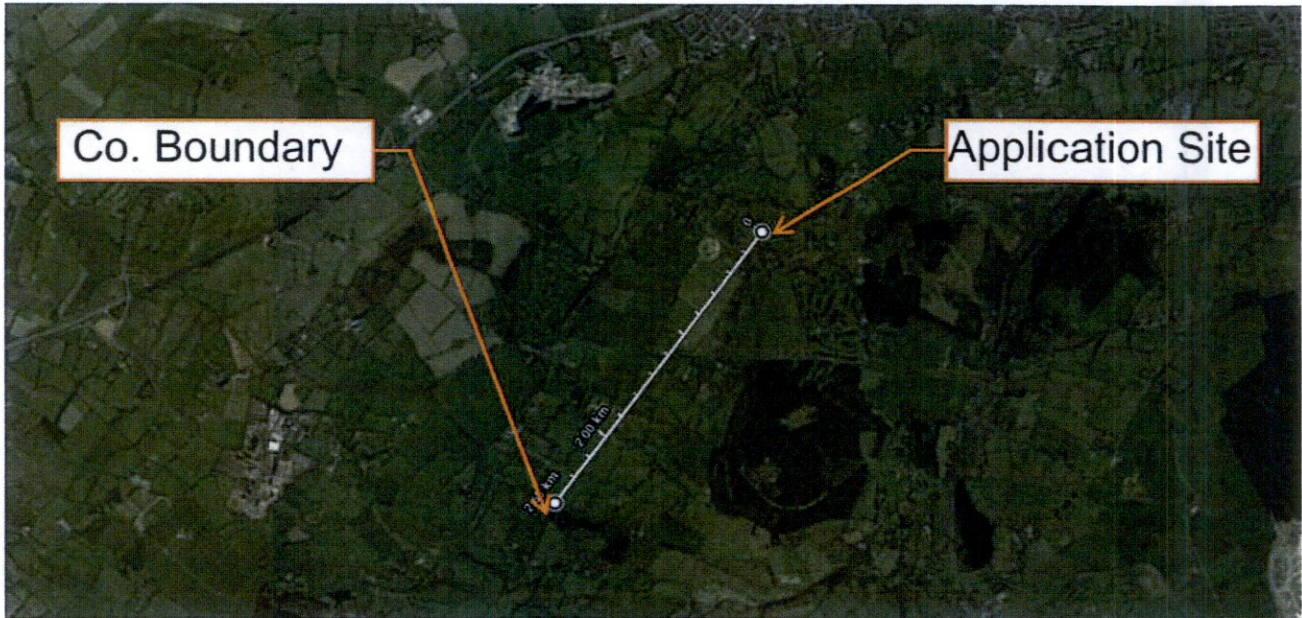
³ The applicant's equine activities will be undertaken on a 20-acre tract which is illustrated in Appendix B of this report and on page 3 of the Business Plan which is attached herewith as Appendix Q.

⁴ The McKiernan family farm covers a sizeable area of 48.56 hectares (120 acres).

This land and its environs were described by the Council, in the Report of the Planning Officer in reg. ref. no. SD21A/0073 (which is discussed in s.3, 'Planning History,' below), in the following terms:

'The subject site is located in the townland of Crockaunadreenagh, a rural area in the foothills of the Dublin Mountains c.3.5km to the southwest of Rathcoole. The site fronts onto a local road (L-6019) to the south-east which has a number of entrances to one-off dwellings and farmyards. The topography of the site drops away from the roadside to the north-west, with a difference of 7 metres (266 to 259m OD) described in the application particulars.

The site is part of extensive landholdings of the applicant's mother, who resides at Hillcrest House. Various activities are identified as taking place on these lands – the red line area is within those lands dedicated to the breeding and training of horses for sport. The site is surrounded by established hedgerows to the south-east and south-west boundaries, and is subdivided with wooden fences'.

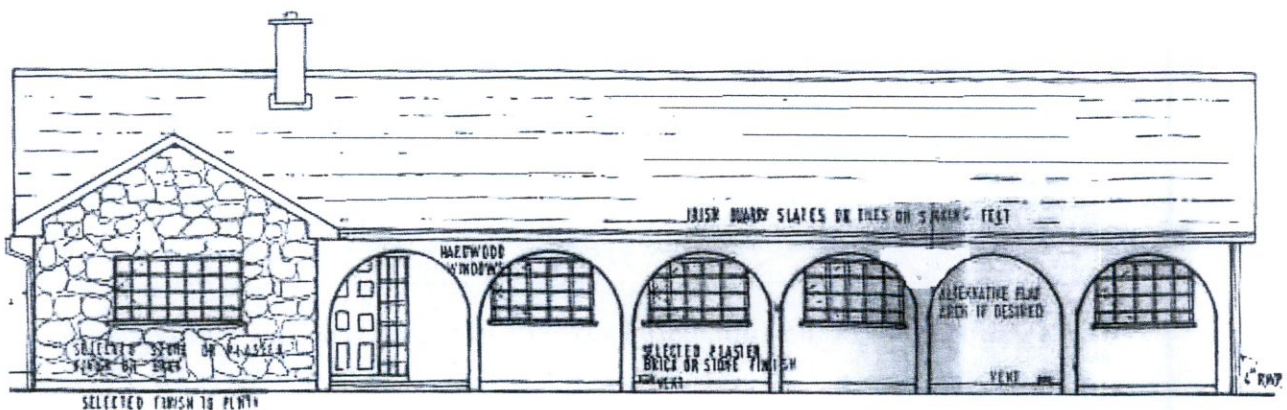


Aerial Image 2: The juxtaposition of the application site with the boundary separating counties Dublin and Kildare (2.65km distant).

3. Select Planning History

(i) The Subject Site

On 17 August 1982, Dublin County Council decided to grant planning permission for a dwelling on the subject site and by Order dated 23 January 1984, An Bord Pleanála issued a grant of permission.



Drawing 1: The façade of the house which was permitted by the Council and the Board.

By application dated 26 March 2021, Mr. McKiernan sought permission under reg. SD21A/0073 for:

- *'Proposed erection of a four-bedroom dwelling house (284.1 sqm), part one storey and part one storey and a half, installation of a packaged wastewater sewage treatment system and polishing filter, stormwater harvesting tank and soakaways, well, new vehicular access, landscaping and ancillary site works, all in association with adjoining equine yard at Hillcrest House, Crockaunadreenagh Road Redgap, Rathcoole, Co. Dublin'.*

A planning submission which accompanied this earlier application submission stated at s.1.2 thereof:

'The overall landholding in the ownership of the Applicant's parents, Oliver and Carmel McKiernan, consists of an area of 48.5ha, bounded by the Crockaunadreenagh Road (L6019) to the south east and Redgap Road (L6.54) to the north and is located within the townland of Redgap, west of Saggart Village. Redgap forms part of the Rural Metropolitan Area. The family landholding consists of the following:

- *Family home*
- *Stable yard and Training Facilities.*
- *Schooling Grounds for Hurdles and Fences;*
- *Exercise Sand Track;*
- *Recovery Stable Yard & Hay / Bedding Storage Facilities and*
- *Half Mile Polytrack Gallop;*
- *Fields laid out in paddocks separated by Timber fencing....*

The rationale for the proposed development is to allow the Applicant to build a dwelling house on the family landholding in proximity to his business. The Applicant has lived all his life on the family landholding, to this day'.



Photograph 1: The application site, which exhibits a slight fall to the north, comprises an underused agricultural paddock on the overall McKiernan family holding.

This proposal was denied consent for four reasons, which are reproduced below, for ease of reference:

'The proposed development would be located on a substandard rural road network which is narrow in width and has poor vertical and horizontal alignment. The road lacks pedestrian, public lighting and drainage facilities and is saturated with one-off houses. Having regard to this, the proposed development would endanger public safety by reason of traffic hazard. The road network in the area is incapable of catering for the continuation of ribbon development. The proposed development would be contrary to the proper planning and sustainable development of the area.

The generation of additional traffic on a laneway substandard in width and alignment and without adequate facilities for pedestrians and vulnerable road users would endanger public safety by reason of a traffic hazard.

Housing Policy H20 'Management of Single Dwellings in Rural Areas', as set out in the South Dublin County Development Plan 2016-2022 states;

"It is the policy of the Council to restrict the spread of dwellings in the rural 'RU', Dublin Mountains 'HA-DM'; Liffey Valley 'HA-LV' and Dodder Valley 'HA-DV' zones and to focus such housing into existing settlements'".

The applicant has not demonstrated the exceptional circumstances that would warrant the setting aside of Policy H20 to allow additional rural housing in this area, though they have shown local ties to the area. The strongest local tie relates to the equine business, but, the applicant has not demonstrated how this business cannot be attended to from the house already associated with the lands, particularly as there is urban housing options available a few minutes' drive from the site in Rathcoole. As such, the proposed development would materially contravene the objectives of the Development Plan and would lead to demands for the uneconomic provision of further public services and facilities in this rural area. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

The site is located in the Dublin Metropolitan Area as designated under the Regional Spatial and Economic Strategy 2019 - 2025 (RSES) and the Dublin Metropolitan Area Spatial Plan, which forms part of the RSES. The Settlement Strategy policy for the Eastern & Midlands Region supports provision of policy at local level that seeks to support and protect existing rural economies such as valuable agricultural lands to ensure sustainable food supply, to protect the value and character of open countryside and to support the diversification of rural economies to create additional jobs and maximise opportunities in emerging sectors, such as agribusiness, renewable energy, tourism and forestry enterprise. The policy further requires Local Authorities to 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. Finally, the settlement strategy policy supports consolidation of the town and village network to ensure that development proceeds sustainably and at an appropriate scale, level and pace in line with the core strategies of the County Development Plans. Having regard to the above, the proposed development would represent the proliferation of further one-off housing in the Dublin Metropolitan Area and would prejudice the achievement of regional settlement strategy policy for the Eastern & Midlands Region'.

(ii) Other South Dublin County Council Decisions

In reg. SD13A/0082, the Council permitted a proposal at Calliaghstown Lr. Rathcoole comprising the:

'Demolition of existing cottage; replacement dormer type house for student accommodation and groomsman's apartment; installation of septic tank and Bord na Mona Puraflo and percolation area and all associated site works'.

We also highlight the decision which was reached in application reg. ref. no. SD07A/0818, in which the Council permitted a development on land at Newtown Upper, Rathcoole, Co. Dublin, as follows:

'A one and a half storey dormer bungalow, garage for domestic use and septic tank'.

The Report of the Planning Officer on this particular development expressed the following opinion:

'...It is considered that the applicant has not adequately demonstrated that his involvement with horses is other than a hobby / pastime. In order to support his contention of his strong involvement in the equine industry and therefore "needs" to reside in the rural area, that the applicant is requested to submit passports for the 15 horses as stated to be in his ownership by way of additional information...

There are concerns with the viability of the enterprise given the limited extent of the landholding, approximately 10 acres. These lands would include the proposed dwelling and ten horse boxes, tack room, feed room, toilet, hay shed, dungstед, and sand arena granted permission under SD07A/0192, currently under construction. Therefore, in order to establish compliance with the aforementioned policy you are requested to submit documentary evidence to support the viability of the enterprise and include passports for the horses in your ownership in order to assess compliance with a genuine need to reside in the rural zone.

Response: The applicant has submitted a cv stating that his involvement in horse show jumping is not a hobby and that he needs to live on site to look after brood mares.

Appraisal: Acceptable'.

We also note how the Council's main objection in reg. SD13A/0069, which questioned the principle of a house on land outside Rathcoole on the basis that the applicant did not have a need to live on that land, was not endorsed by the Board in the related appeal of ref. PL06S.242195. The Council's first reason for refusal is reproduced as follows, to facilitate comparison with the Board's single objection:

'The proposed site is located in an area zoned Objective B "to protect and improve Rural Amenity and to provide for the development of Agriculture" in the South Dublin County Council Development Plan 2010-2016. The Council's rural housing policy – Policy H31 states:

It is the policy of the Council that within areas designated with Zoning Objective 'B' ("to protect and improve rural amenity and to provide for the development of agriculture") new or replacement dwellings will only be permitted on suitable sites where:

- Applicants can establish a genuine need to reside in close proximity to their employment (such employment being related to the rural community)*

Or

- Applicants have close family ties with the rural community.*

The applicant has not satisfactorily demonstrated compliance with Policy 31. Thus, the proposed development would be contrary to the South Dublin County Council Development Plan 2010 – 2016 and would contravene the zoning objective for the area and as such would be contrary to the proper planning and sustainable development of the area'.

Although An Bord Pleanála had also concluded that the application in this earlier appeal had not satisfied the rural housing policy, this conclusion was based on the size and scale of that landholding⁵ and its ability to accommodate a sustainable equestrian business, rather than whether the operator of an equine facility was capable of complying with the provisions of the Council's *Development Plan*:

'The proposed development is located within a rural area close to Rathcoole which is zoned "B –

⁵ Which would comprise just 4 acres of equine land, after the proposed house had been built.

To protect and improve rural amenity and to provide for the development of agriculture” in the South Dublin County Development Plan 2010-2016, and is also within an area defined as “Under Strong Urban Influence” in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005. It is also the policy of the planning authority to restrict development in such areas which are under strong development pressure and to encourage nucleated development. Having regard to the proposed size and scale of the stable complex on a very restricted landholding, which would be further reduced by parking and storage facilities in addition to a dwelling unit with domestic drainage system and private curtilage, the Board is not satisfied that the proposed development is a sustainable farm enterprise and, therefore, the need for a dwelling has not been established to the Board's satisfaction. There is also a lack of clarity regarding compliance with Policy H 31 of the development plan in this regard. It is considered, therefore, that the proposed development would further erode the rural character of the area and would be contrary to the proper planning and sustainable development of the area’.

We also place some weight on the passage of application reg. ref. no. SD12A/0130, relating to a proposed house at Glenasmole Tallaght Dublin 24, through the planning, appeal and legal systems. In that instance, the Planning Authority had denied consent on the basis of compliance with the rural housing test and this issue was assessed in the related appeal under ref. no. PL06S.241613⁶ as follows:

‘Housing need is perhaps the more contentious issue in relation to the current application and appeal. The Planning Authority considered that the applicant in this instance has not adequately demonstrated that there is a necessity to reside in close proximity to the proposed business. Furthermore it is noted that the applicants will continue to in their present employment until the business develops and this may limit the success of the business. The housing need criteria set out in the Development Plan as it relates to the site is essentially encapsulated in policy H32. It states that new or replacement dwellings will only be permitted where:

- the applicant is a native of the area and (my emphasis)*
- the applicant can demonstrate a genuine housing need for housing in this particular area and*
- the development is related directly to the areas amenity potential or to its use as agriculture mountain or hill farming and*
- the development would not prejudice the environmental capacity of the area and would be in keeping with the character of the mountain area....*

It also appears that the development of horticultural centre in conjunction with the house, is a use which could be considered to be related to the areas amenity potential or its use as an agricultural activity. In this regard would comply with the third criteria as set out under policy H32. A question has arisen in the Planning Authority's assessment over whether or not there is a strong commitment to the proposed horticultural enterprise as the applicant intends initially to work part-time on the project...I do not consider that the Board or South Dublin County Council can question the applicant's motivation, commitment or raison d'etre with regard to the intention of starting a business of the nature proposed. The amount of detail and funding commitments obtained in relation to the enterprise suggest that the applicant is committed to pursuing the development of a horticulture business on the site in question. I do not consider that either An Bord Pleanála or the Planning Authority can (or should) reasonably predict the success or otherwise of the business proposed for the purposes of determining the applicant.

It appears that the Sustainable Rural Housing Guidelines for Planning Authority (April 2005) and circular SP5-08 have adapted more flexible or lenient criteria than the criteria set out in the Development Plan under policy H32. The Rural Housing Guidelines suggest that people working either full-time or part-time in rural areas may meet the rural generated housing need. Likewise circular SP5-08 suggests that the local housing need, need not necessarily be restricted to locals and that the Planning Authority should not discriminate against applicant who wish to establish a full-time home base business.

⁶ The proposal was described on the Order, *inter alia*, as follows: ‘Construction of a single storey, split level, three bedroom house, the formation of a new vehicular access onto Glassamuck Road, the formation of a parking area for vehicles and pedestrian path to house...the construction of a polytunnel structure and rainwater storage tank in connection with a horticultural business to be established on the site and all other works...’

Such applicants, the circular suggests, "should reasonably be required to satisfy the Planning Authority of their commitment to operate a fulltime business from the proposed home in a rural area in order for example to discourage commuting to towns or cities". They will also be required to outline how their business will contribute to and enhance the rural community and that they will satisfy the Planning Authority that the nature and employment of the businesses compatible with those specified in the local needs criteria for rural areas so as to discourage applicants whose business is not location dependent (e.g. telesales or telemarketing).

In my view it could be reasonably argued that the applicant has demonstrated a bone fide commitment to operate a business from the site which would contribute to the local community and where the predominant occupation associated with the activity is farming/resource related as per paragraph 3.2.3 of the Sustainable Rural Housing Guidelines'.

The Board's decision to deny consent was the subject of High Court proceedings in *Brophy & Nulty v-An Bord Pleanala*⁷ and, whilst that ruling turned on the particular set of stricter controls which apply in the upland part of South Co. Dublin (and which do not apply in the vicinity of the present site), as reproduce an extract from that judgement, on the question of a need to live on the property in question:

'The proposed horticultural business was intended to, at least initially, be run on a part-time / weekend basis and the planning authority expressed a concern that the business itself did not require the applicants to reside in the area. The link between this proposed business venture and the expressed need of the applicants to reside in the area was the focus of the refusal, and both the local authority, and the Board on appeal, took the view that the business would not require daily attendance on site and could not form the basis of a genuine need to reside close by... (emphasis added)

...The inspector identified the most contentious issue for the purposes of the planning application as being "housing need", and it was he who identified the different emphasis between the general proposition contained in the planning guidelines that accepted the desirability of granting planning permission to persons with a genuine and established connection to an area, and the fact that South Dublin County Council had opted, for the purposes of the Development Plan for this particular area, to also require an applicant to identify a genuine housing need for housing in a particular location. In that context the inspector noted the strong commitment of the applicants to the area and said the following:-

"I do not consider that the Board or South Dublin County Council could question the applicants' motivation, commitment or raison d'être with regard to the intention of starting a business of the nature proposed."

The planning inspector regarded the application and the business plan as being genuine and, correctly in my view, did not consider it to be an appropriate planning consideration to engage with questions of whether the business plan could reasonably be expected to succeed. His contention however was that while the applicants did appear to satisfy the criteria set out in the 2005 Guidelines, that these were not the relevant test applicable to the subject application, and, as he put it, the test was "more stringent".

Furthermore, the planning inspector explained the reason for the strictness of the approach taken by South Dublin County Council to development in this area, and the sole remaining test was whether the applicants could demonstrate a need to live in a house adjacent to the proposed horticultural business which he held they could not...'

⁷ High Court Judicial Review 2013 No. 635 Baker J.



Photographs 2 & 3: The rear (above) and side boundaries of the application site are heavily planted with evergreen trees and are visually impenetrable. (It is proposed to replace this hedgerow with mixed native species, over time, following the implementation of all other landscaping works).

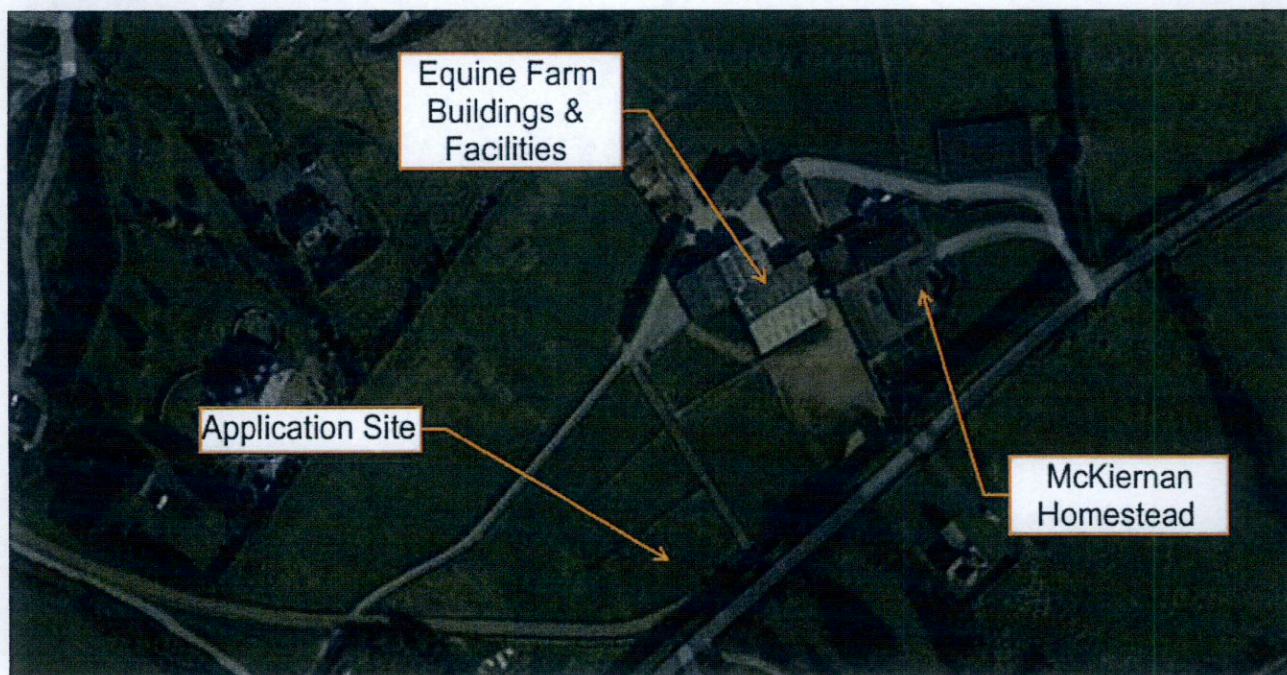


The most important determination which was reached in the recent past comprises the decision of An Bord Pleanála to grant planning permission under appeal reg. ref. no. PL06S.309969 for the following:

'A horse isolation unit consisting of five enclosed stable cubicles, tack room, toilet, canteen, with loft feedstore on first floor and a dwelling unit containing two bedrooms, sitting room, kitchen / dining area, bathroom, boot room and farm office, installation of Oakstown BAF wastewater treatment system and percolation area, an American barn structure with 14. No. stables, feed store, tack room and kitchen and toilet, construction of recessed vehicular entrance, closure of existing agricultural access and all associated site works at Farmersvale, Kill, County Dublin'.

South Dublin County Council had refused planning permission for reasons related to compliance with the rural housing policy and road safety (as well as precedent) and the Board's decision ran counter to the recommendation which had been set out in the Report of the Inspector, on the following basis:

'In deciding not to accept the Inspector's recommendation to refuse permission, the Board noted and shared the views of the Inspector that no issue of public safety by reason of traffic hazard would arise. Furthermore, the Board noted and agreed with the commentary of the Inspector that the proposed sport horse business is a rural based activity which would contribute to and enhance the rural community and is an activity compatible with the local needs criteria for rural areas and that to oversee the full-time operation of a horse sport business, the provision of a house would be a reasonable element of the development. Furthermore, the Board noted the specific design form of the proposed development, wherein the proposed residential unit is physically attached to the horse isolation unit, as part of the same overall structure...the Board determined that the granting of permission for the specific residential unit as part of the overall scheme would be appropriate...and subject to condition on the nature of occupation of the said dwelling, would be in accordance with the proper planning and sustainable development of the area.'



Aerial Image 3: The application site abuts the sizeable McKiernan equine facility.

4. The Proposed Development

Permission is sought for a development which is described on the applicant's publicity notices as:

'Proposed erection of a three-bedroom dwelling house (233.6 sqm), containing a single storey, installation of a packaged wastewater sewage treatment system and polishing filter, stormwater harvesting tank and soakaways, well, new vehicular access, landscaping and ancillary site works, all in association with adjoining equine yard at Hillcrest House, Crockaunadreenagh Road Redgap, Rathcoole, Co. Dublin'.

5. National Planning Policy

(i) Sustainable Development

Sustainable Development: A Strategy for Ireland has provided a policy framework for sustainable development since 1997 and notes the benefits of careful land use planning including:

- efficiency in the use of energy, transport and natural resources;

- the protection and enhancement of the natural environment;
- accommodation of development needs in an environmentally sustainable / sensitive manner.



Photograph 4: The proposed house would be immediately adjacent to the McKiernan family home, as well as to a large collection of equestrian farm buildings.

This document notes at Chapter 14 that:

'Spatial planning and land use policies, which of necessity, have long time frames, seek to promote orderly development to:

- *meet the needs of society for housing, food and materials, economic and social infrastructure, places of work, amenities and recreational facilities;*
- *balance competing needs and prevent and minimise adverse impacts of human activities on the environment'.*

(ii) National Planning Framework

The *National Planning Framework* (NPF) is the Government's high-level strategic plan for shaping the future growth and development of our country out to the year 2040. It is a framework to guide public and private investment, to create and promote opportunities for our people, and to protect and enhance the environment so as to accommodate an extra one million inhabitants by 2040. This anticipated level of growth will require hundreds of thousands of new homes and, as stated in s.1.1:

'If we fail to plan for this growth and for the demands it will place on our built and natural environment, as well as on our social and economic fabric, then we will certainly fail in our responsibility to future generations of Irish men and Irish women. That responsibility is to ensure their prosperity and happiness in an ever-changing world. The Framework suggests that 'Carefully managing the sustainable growth of compact cities, towns and villages will add value and create more attractive places in which people can live and work'. It indicates that urban settlements throughout the country contain "potential development areas...that are suitable and capable...to provide housing" and recommends a "co-ordinated approach to their development...to realise their potential" '.

The purpose of the *National Planning Framework* is to enable all parts of Ireland, whether rural or urban, to successfully accommodate growth and change, by facilitating a shift towards Ireland's regions and cities other than Dublin, while also recognising Dublin's ongoing key role. In relation to residential development within the Mid-Eastern Region, the *Framework* indicates, at page no. 33:

'The strategic location of counties Kildare, Meath and Wicklow, proximate to the Capital, has in part, resulted in significant development in a region characterised by the dominance of Dublin. The MidEast has experienced high levels of population growth in recent decades, at more than twice the national growth rate. Managing the challenges of future growth is critical to this regional area. A more balanced and sustainable pattern of development, with a greater focus on addressing employment creation, local infrastructure needs and addressing the legacy of rapid growth, must be prioritised. This means that housing development should be primarily based on employment growth, accessibility by sustainable transport modes and quality of life, rather than unsustainable commuting patterns.'

While the *Framework* includes rural housing it states, at p. 62 (headed 'Ireland's Towns'), as follows:

'There is scope for potential growth in all towns in Ireland. In the context of the National Planning Framework, this will largely be determined by the relevant Regional Spatial and Economic Strategy for each Regional Assembly area, also taking into consideration the potential of smaller settlements and rural areas...In all cases, regional and local planning authorities must consider the varied growth potential of different types of settlement in accordance with National Policy Objective 7, as well as rural areas, and tailor a strategy to balance this accordingly...'

In the case of *Brophy and Nulty-v-An Bord Pleanala*⁸, the High Court considered the interplay between government policy, in *Sustainable Rural Housing Guidelines*, on one hand and local policy in the *South Dublin County Development Plan 2010* and held, as a matter of generality, that compliance with the latter publication trumped adherence to national planning policy. On the case facts, the Board had candidly accepted that the appellants were from the rural area in question and that they satisfied the requirements of the *Guidelines* but found that they had failed to comply with an extra stipulation, which applied in the general vicinity of the appeal site. In his judgment, Baker J. opined as follows:

'I consider, however, that in the case of a conflict between the general provisions contained in relevant guidelines and a specific provision contained in a planning policy, that the latter must prevail for the following reasons...

...I consider that, in the case of the determination of a particular planning application, and where a difference is apparent, or where a test is more or less stringent in one than in the other, the "solemn and common public contract" contained in the development plan itself must prevail. This is not merely on account of the solemnity of the document, and the requirement of the common good that the contract, once it has been adopted for the common good, carries with it an obligation on the part of the planning authority to implement its statutory functions in accordance with that plan, but also because the consideration of a development permission in each case is specific to, and intended to be specific to, an individual location and in respect of which it is to be assumed that the individual local authority adopting a plan has a particular and specialist knowledge.'

(iii) Sustainable Rural Housing

Sustainable Rural Housing expands on the former *National Spatial Strategy*, by emphasising:

- the importance of renewing established communities in rural towns and the countryside;
- the need to ensure that the planning system guides residential and other development to the right locations in rural areas in the interest of protecting natural assets;
- the need to tailor planning policies to respond to local circumstances.

⁸ As discussed on page no. 14 above.

This policy refers specifically to the need for ancillary services and facilities to cater for those preferring to live outside the formal boundaries of towns and villages. For example, s.2.1 seeks to:

'Ensure that the needs of rural communities are identified in the development plan process and that policies are put in place to ensure that the type and scale of residential and other development in rural areas, at appropriate locations, necessary to sustain rural communities is accommodated'.

Section 3.2.3 of this policy document states as follows:

'To implement the broad approach and policies of the NSS, a key question for planning authorities, particularly those with extensive areas under major urban influence, is how to define rural generated housing needs. Development plans traditionally have described the types of circumstances where rural housing needs are considered to have arisen. Where planning authority areas include rural areas close to cities and towns, that are under pressure for substantial urban generated development, distinguishing between urban and rural housing requirements should continue. This approach is also appropriate in the environs of the new gateways and hubs....Development plans in defining persons considered as constituting those with rural generated housing needs, should avoid being so prescriptive so as to end up with a very rigid development control system. For example, specifying that persons engaged in full time agriculture only will be considered as constituting a rural generated housing need could preclude other family members being accommodated on the family farm. An overly vague approach should also be avoided, as this would be of little practical use. Indeed, suggestions should be included in the development plan illustrating the broad categories of circumstances that would lead the planning authority to conclude that a particular proposal for development is intended to meet a rural generated housing need. It would then be a matter for the development control system to assess the merits of each application on a case-by-case basis within this broad framework of categories'.

Section 3.2.3 of the *Guidelines* defines 'Persons who are an intrinsic part of the rural community':

'Such persons will normally have spent substantial periods of their lives living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence. Returning emigrants who lived for substantial parts of their lives in rural areas, then moved abroad and who now wish to return to reside near other family members, to work locally, to care for elderly family members or to retire should also be accommodated'.

This section proceeds to discuss persons who are working in rural areas in the following terms:

'Such circumstances will normally encompass persons involved in full time farming, forestry, inland waterway or marine related occupations as well as part time occupations where the predominant occupation is farming / natural resource related. Such circumstances could also encompass persons whose work is intrinsically related to rural areas such as teachers in rural schools or other persons whose work predominantly takes place within rural areas'.

(iv) Government Policy on Rural Development

The *Rural Development Programme - Ireland 2014 – 2020* is part of the Common Agricultural Policy (CAP), a common set of objectives, principles and rules through which the European Union coordinates support for European agriculture. This framework is comprised of two complementary pillars; Pillar 1 deals with direct payments to farmers and market measures, while Pillar 2 covers multi-annual rural development measures which include those that are beneficial for the environment and climate change. In this particular regard, EU legislation contains three overriding objectives:

- enhancing the competitiveness of agriculture;
- ensuring the sustainable management of natural resources and climate action;
- achieving a balanced regional development of rural economies and communities.

The priorities that Member States must have regard to in their Rural Development Priorities are:

- fostering knowledge transfer and innovation in agriculture, forestry and rural areas;
- enhancing the viability / competitiveness of farms and all types of agriculture;
- promoting food chain organisation and risk management in agriculture;
- restoring, preserving and enhancing ecosystems dependent on agriculture and forestry;
- promoting resource efficiency and supporting the shift toward a low-carbon and climate-resilient economy in the agriculture, food and forestry sectors;
- promoting social inclusion, poverty reduction and economic development in rural areas.

Realising our Rural Potential; Action Plan for Rural Development observes how rural Ireland has been faced with challenges over recent decades, notably through the decline of traditional industries and associated losses in employment opportunities, through the emigration of many of educated people and through poor connectivity in terms of transport and modern telecommunications infrastructure. This government publication states that Ireland's economy and heritage are heavily dependent on the contribution of rural areas and states that agri-food and tourism – which are both crucial to rural economies – employ in excess of 363,000 persons (or 18 per cent of the workforce).

Notwithstanding the fact that there is no “one-size-fits-all” approach to rural development given that different rural areas have different needs and require different solutions, depending on their local assets, their peripherality, population density (etc), this publication seeks to provide a cohesive structure across a range of policy areas to help support communities in rural Ireland to maximise their assets and realise their potential, leading to a better quality of life for those living in rural communities. This *Action Plan for Rural Development* is based around five key thematic pillars, detailed as follows:

Pillar 1: Supporting Sustainable Communities

Key Objectives:

- Make rural Ireland a better place in which to live and work by revitalising our town and village centres through the implementation of initiatives such as the Town and Village Renewal Scheme, the CLÁR and RAPID Programmes and measures to support people to live in town centres.
- Enhance local services in the community through the provision of support for rural GPs, through ongoing development of the primary care sector to deliver better care close to home in communities, through support for the rural post office network to adapt to a changing business environment, and through continued access to schools for children in rural Ireland.
- Empower Local Communities, including through the development and support of the Public Participation Network and Local Community Development Committees, to ensure that a diversity of voices is heard and included in local decision-making processes and that communities continue to identify their own needs and solutions.
- Build better communities through ongoing investment in the LEADER Programme and support vulnerable rural communities through initiatives such as the Rural Social Scheme.

Pillar 2: Supporting Enterprise and Employment

Key Objectives:

- Grow and attract enterprise and jobs through the roll out of the eight regional Action Plans for Jobs and the development of an Atlantic Economic Corridor to promote balanced regional development.
- Support sectoral growth the continued development of the agri-food sector through the implementation of Food Wise 2025 and roll out initiatives to develop the renewable energy sector and International Financial Services in rural Ireland.
- Ensure rural communities have the necessary skills to meet the needs of the labour market and to encourage innovation and maximise assets.

- Support rural jobseekers through the Intreo offices and initiatives such as the Social Inclusion and Community Activation Programme, Tús and Community Employment.
- Support farm and fishing incomes through CAP payments, the Rural Development Programme and other Government supports.

Pillar 3: Maximising our Rural Tourism and Recreation Potential

Key Objectives:

- Increase tourist numbers to rural Ireland by 12% by 2019.
- Support sustainable jobs through targeted rural tourism initiatives, including through the support of key marketing initiatives such as Ireland’s Ancient East and the Wild Atlantic Way, as well as developing the potential of Ireland’s Lakelands.
- Develop and promote Activity Tourism in rural areas through the development of blueways, greenways and other recreational opportunities.
- Develop and promote our natural and built heritage through investment and development of our Gaeltacht areas, enhanced promotion of our National Parks and Nature Reserves and other natural and built resources.

Pillar 4: Fostering Culture and Creativity in rural communities

Key Objectives:

- Increase access to the arts and enhance cultural facilities in rural communities.
- Further develop and enhance culture and creativity in rural Ireland through the establishment of culture teams and creativity hubs as part of the Creative Ireland Programme.
- Promote the Irish language as a key resource in Gaeltacht and other rural communities.

Pillar 5: Improving Rural Infrastructure and Connectivity Key Objectives:

- Bring high speed broadband to every premises in Ireland through the rollout of the National Broadband Plan and improve mobile phone access in rural areas.
- Improve rural transport links through a review of services, support for our regional airports and investment in rural infrastructure.
- Implement flood relief measures and other land management measures to protect our rural infrastructure.

6. Local Planning Policy

The Council acknowledges the distinctive characteristics of the rural communities of the county, supports their way of life and will endeavour to ensure their continued existence as viable communities. Further to *Circular SP 5/08*, the *County Development Plan* sets out to strike a balance between facilitating housing for people who have a need to live in rural areas of the county, while protecting the countryside from urban generated housing. It is the policy of the Council to restrict the spread of dwellings into rural and high amenity areas, with the arrangements set out for rural housing in the *Development Plan* applying to lands that are designated with the following objectives:

RU: To protect and improve rural amenity and to provide for the development of agriculture.

HA-DM: To protect and enhance the outstanding natural character of the Dublin Mountains Area.

HA-LV: To protect and enhance the outstanding character and amenity of the Liffey Valley.

HA-DV: To protect and enhance the outstanding character and amenity of the Dodder Valley.

Section 6.9.1 of the *Plan* (headed ‘*Rural Housing Policies and Local Need Criteria*’) states as follows:

‘Rural generated housing arises where the applicant has close family links to the rural community and / or the applicant works in a type of employment intrinsic to the rural economy, which requires the applicant to live in the rural area to be close to their rural-based employment....’



Photographs 5 & 6: The proposed house would be beside a cluster of existing equine farm buildings on the extensive McKiernan landholding.

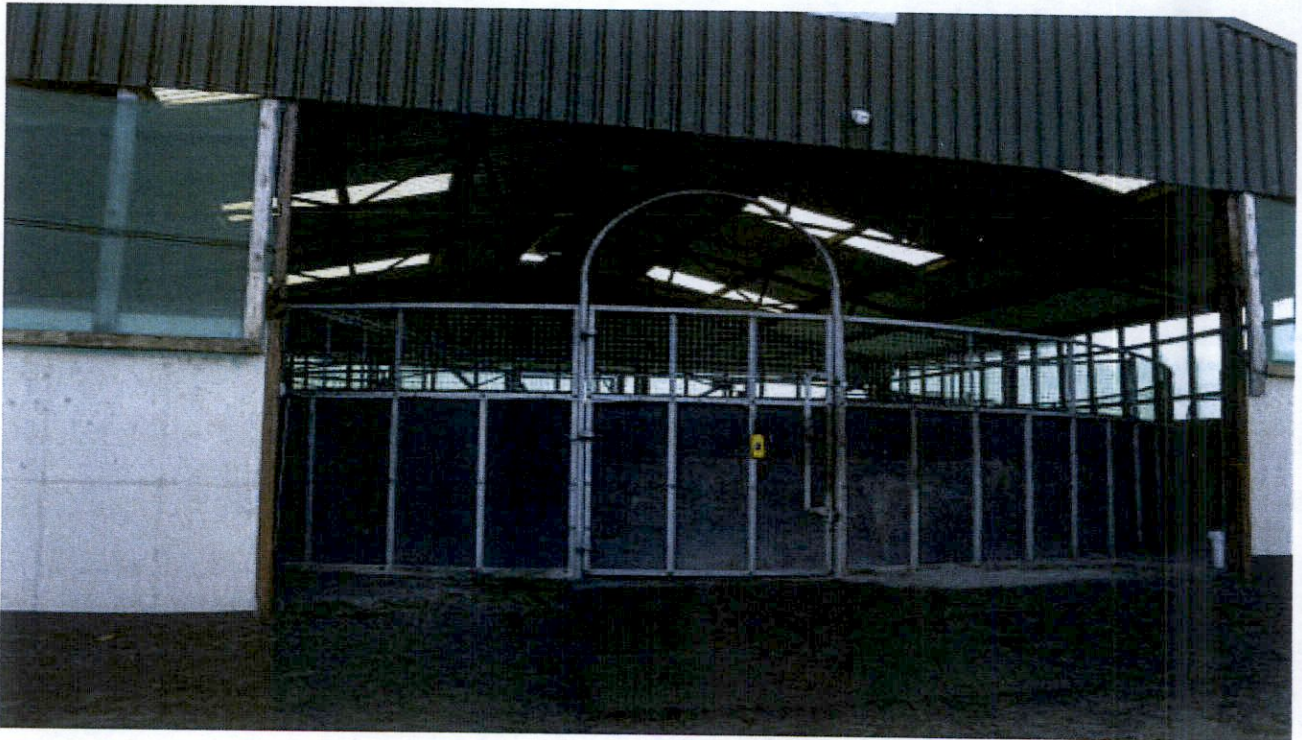


Housing Policy H17 of the *South Dublin County Development Plan 2022 - 2028* (which is headed 'Rural Housing Policy and Local Need Criteria') is reproduced as follows, for ease of reference:

'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'.

Housing Policy H18 of this *County Development Plan 2022 - 2028* states as follows:

'New or replacement dwellings within areas designated with Zoning Objective 'RU' (to protect and improve rural amenity and to provide for the development of agriculture) will only be permitted in exceptional circumstances'.



Photographs 7 & 8: The subject dwelling would form part of an existing group of buildings on the McKiernan family farm.



7. Preliminary Planning Submission

We suggest that certain aspects of this proposal are unobjectionable to the degree that permission may not be needed for such activities or to the extent that such elements are acceptable to the Council. In order that the remaining parts of this report can focus on the key issues, we take this opportunity to identify the items which can be summarily disposed of in any substantive analysis of this development.

(i) Existing Land Use

The land can be used for any of the agricultural activities identified under section 4 of the Planning and Development Act, 2000 which categorises the *'use of land for the purpose of agriculture'* as *'exempted development'*. As *'the breeding and keeping of livestock...the training of horses and the rearing of bloodstock'* forms part of *'agriculture'*, the application site can clearly be used for equine purposes regardless of whether the Council issues planning permission for the proposed development.

Thus, even if the applicant is forced to live elsewhere as a result of permission being refused, the use of this site for farming purposes can take place without consent. It is imperative however, that for this equestrian business to operate on a commercial footing and provide an income for the applicant, a house must be erected thereon to secure and protect valuable items and to facilitate animal husbandry, especially when mares are in foal. Indeed, the lack of on-site accommodation would make it virtually impossible for the proposed operation to succeed at the scale envisaged as it would require multiple trips daily to and from a dwelling elsewhere, in order to care for animals on the site.



Photograph 9: The extensive McKiernan holding is already used for equine purposes and this activity comprises exempted development.

(ii) Principle of Equine Development

Notwithstanding the provisions of planning law, as summarised above, we note how the Report of the Planning Officer in reg. ref. no. SD21A/0073 considered that equestrian activities on this land would accord with planning policy, with this internal Council assessment expressing the following opinion:

'Equestrian use is considered an agricultural use under Section 2(1) of the Planning and Development Act, 2000 as amended.

We suggest that the Planning Authority accepts that equestrian activity is appropriate on this holding.



Photograph 10: The McKiernan land boasts external as well as internal equine facilities.

(iii) Principle of Residential Development

The Report of the Planning Officer in reg. SD21A/0073 considered that residential development on this land would accord with the zoning arrangement, with this analysis expressing the following view⁹:

'The site is subject to land-use zoning objective 'RU' – 'To protect and improve Rural Amenity and to provide for the development of Agriculture'. The proposed development would constitute a one-off rural house in the countryside. The use class 'Residential' is listed as 'open for consideration' under this zoning objective subject to accordance with Council policy for development in rural areas. Therefore, such proposals may be permitted only if they do not conflict with the policies and objectives of the Development Plan (including housing needs criteria) and if they are consistent with the principles of proper planning and sustainable development and relevant Ministerial guidelines.

The proposal therefore is assessed below within this context'. (Emphasis added).

(iv) Site Layout Considerations

None of the reasons for refusal on the last occasion oppose the proposal because of the location of the proposed building within the application site and no part of the Report of the Planning Officer objects to the juxtaposition of the proposed dwelling with the adjacent farmhouse and equestrian buildings.

⁹ Importantly, we observe how this site is located on land within the standard 'RU' designation rather than on a holding which is situated within one of the more sensitive parts of South County Dublin (eg. 'HA') where additional restrictions on new rural housing apply.



Drawing 2: The Council has not opposed the juxtaposition of the proposed building with the site boundaries or otherwise suggested that the dwelling should be relocated.

(v) Scale of the Proposed Dwelling

Aside from the fact that none of the reasons for refusal on the last occasion objected to the scale of the house we note how the Report of the Planning Officer in reg. SD21A/0073 accepted the size of this building, with this South Dublin County Council analysis expressing the following conclusion:

'The road to the south-east (front) of the site marks the boundary between the 'RU' zoned lands and lands zoned 'HA-DM' – "To protect and enhance the outstanding natural character of the Dublin Mountains Area." Development in transitional areas is guided by section 11.1.1 (iv) of the South Dublin County Development Plan 2016 - 2022, which states:

Abrupt transitions in scale and use should be avoided adjacent to the boundary of land use zones. Development proposals in transition areas should seek to avoid development that would be detrimental to the amenities of the contiguous zone. For example, regard should be had to the use, scale and density of development proposals in zones abutting residential or rural areas in order to protect residential or rural amenity, as appropriate.

It is considered that the proposed development would not provide for an abrupt transition'.

(vi) Visual Amenity

Linked to the County Council's acceptance of the scale and massing of the dwelling is its acknowledgement that the development would not be visually intrusive when seen from the adjacent area, with the Report of the Planning Officer in the case of reg. SD21A/0073 stating, *inter alia*, that:

'The applicant has provided a Landscape & Visual Impact Assessment and this shows consideration of the impact the house might have on the landscape. ...The proposed house would be built over 3 lateral sections, stepping down with the land. The house would be slightly below the level of the road, and centrally placed within the site....The house would not be located on a ridgeline and would uses the natural slope of the site....

The proposal is not unacceptable under this criterion'.

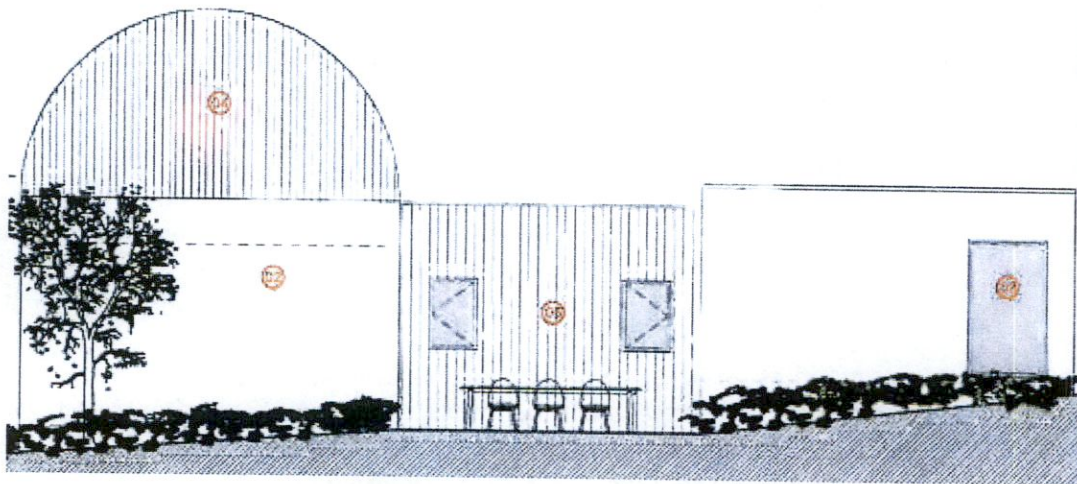
(vii) Architectural Design Detailing

None of the reasons for refusal in reg. SD21A/0073 objected to the proposed design of the house, with the Report of the Planning Officer on this previous occasion generally accepting its architecture:

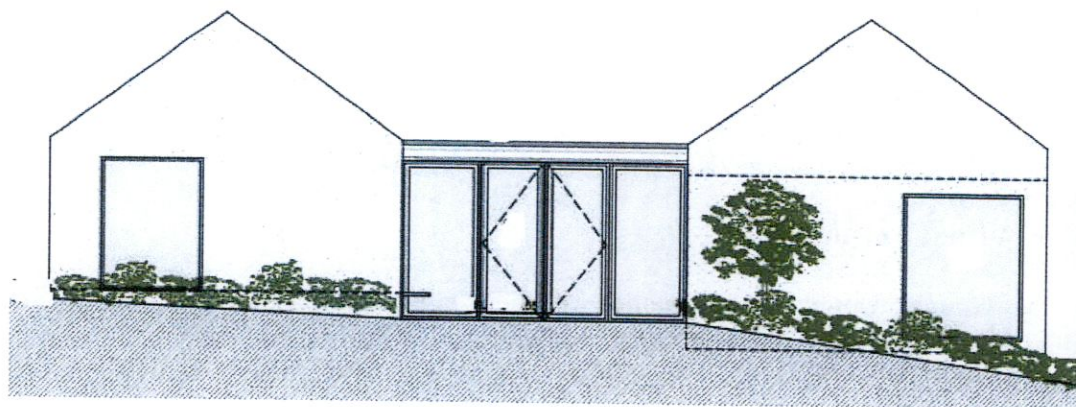
'The two higher sections would be one storey, while the lowest section would effectively be two storey, with a double-height reception room and upper floor accommodation under a curved roof...At its height, the roof would appear to be approx. 7.3 metres above ground level.

The north-western section of the house, with the curved roof, presents a long face west down the slope of the site. Though described as vernacular in the particulars, this is considered to be quite a unique design, the visual impact of which would differ based on material treatment. If there are no other issues with the development, the applicant should provide CGI images of the proposed development and material treatment, or otherwise material samples....The height of the western wing of the house and its curved roof feature is a potentially excessive design feature and there is a significant likelihood that this would not fit into the landscape.

In general, the design response to the site is not considered to be inappropriate'.



Drawing 3(a) and (b): The design of the dwelling which is now proposed (below) has been altered so as to omit the first floor.



(viii) Environmental Impact

The Planning Authority has candidly acknowledged that the proposed development would not pose a threat to the environment, with the Report of the Planning Officer on the last occasion stating that:

'the Ecological report provided with the application shows an acceptable scenario for development and mitigation'.

(ix) Stormwater Drainage

The Council's Water Services Planning Report of 28 April 2021 raised no objection to the proposed surface water drainage arrangements, although this memorandum makes three requests, as follows:

*'Submit a report showing percolation test results at location of proposed soakaway as per BRE Digest 365 Standards.
Submit a drawing showing proposed soakaway design details as per BRE Digest 365 Standards.
Include water butt/s in proposed development as part of SuDS'.*

These items have been included as part of the drainage proposal which forms part of this application.

(x) Wastewater Disposal

Although the Report of the Planning Officer in reg. SD21A/0073 suggests that there is a *'potential issue regarding wastewater treatment and whether or not the proposed response to the site is appropriate given groundwater sensitivity in the area'*, this same internal Council document states:

'In relation to wastewater and water supply, the application has been referred to the HSE Environmental Health Officer. Unfortunately, no report has been supplied...'

As the concern has not been properly articulated, as it has not been supported by its technical divisions and as it has not reflected in any of the reasons for refusal, it is our view that the Site Characterisation Form which has been prepared by Patrick Joyce, Consulting Engineer, should be accepted in this case.

8. Rural Housing Policy

The third reason for refusal on the last occasion suggested that Mr. McKiernan does not satisfy the rural housing policy on three grounds and we address this objection under the following sub-headings

(i) The Nature of the Planning Controls

(a) Strategic Provisions

The *National Spatial Strategy*¹⁰ seeks to arrest rural population decline, with the detailed methodology for achieving this goal being set out in *Sustainable Rural Housing*. Both documents recognise the importance of encouraging rural development and both stress the need to tailor planning policies to differing local conditions. The *Guidelines* and the *Strategy* recommend that planning policy should allow rural housing for persons living in rural areas (*'rural generated housing'*) and oppose dwellings for individuals whose lives are based in urban areas (*'urban generated housing'*).

The *Strategy* notes the interdependence of urban and rural areas and promotes policies which strengthen communities in the countryside. It notes (s.3.5.2) how the proportion of people living in rural areas has been reducing, in line with falling farming employment opportunities and seeks to strengthen communities in the countryside through rural re-population. In doing so, it notes how demands for rural housing arise in different circumstances and only seeks to accommodate individuals who are part of the rural community. *Sustainable Rural Housing* builds on this approach, with s.3.2.3 defining *'Persons who are an intrinsic part of the rural community'* to include horse breeders.

Planning policy allows persons who work in rural areas to live in the countryside and in the area in which they are engaged and this proposal complies with this goal, in facilitating the creation of a viable equine operation which is to be run by an individual with extensive experience in this area. The proposal accords with DoEHLG *Sustainable Rural Housing Strategy* which states *'As a general principle... rural generated housing needs should be accommodated in the areas where they arise'*.

¹⁰ This document was in force when the *County Development Plan 2016* was adopted and thus informed the Council's approach on the last occasion.

Indeed, s.3.2.3 of *Sustainable Rural Housing* even allows housing for those engaged in non-farming sectors including returning emigrants, former natives returning to their home-place and individuals employed in natural resources, education or other work which takes place in rural areas. In assessing a candidate's eligibility for a house, this policy warns against a rigid development control system, in reflection of the fact that planning policy recognises the tradition of people living in the countryside and the dispersed settlement pattern which exists in many rural areas and local councils are advised to accommodate candidates with social, familial, or work links to a particular area, in that locality.

Planning policy allows persons who work in a particular part of the countryside and individuals who are native to a particular rural area to live in that locality, in the vicinity of their workplace and close by the community with whom they have social and / or economic ties. We ask the County Council to accept, as a preliminary proposition, that national planning policy aims to accommodate applicants with social or occupational links to a particular rural area and that, consistent with the *National Spatial Strategy*, such housing needs should be accommodated in the area where they arise. As shown in detail below, the applicant is eligible for a house at Rathcoole Co. Dublin for occupational reasons.

(b) Compliance on the Basis of Residency

Before turning to the applicant's work with horses, this third reason for refusal seems to suppose that a residential connection to this particular part of the open countryside is insufficient, in itself, to facilitate compliance with the rural housing policy (stating that '*though they have shown local ties to the area*', the applicant, Mr. Pearse McKiernan, does not qualify for a one-off house in this rural location). In addressing this issue, we need to examine the nature of the rural dwelling arrangements.

The adopted settlement strategy has several elements and whilst it envisages a role for larger towns, it also prescribes a separate role for rural areas. Indeed, as the *County Development Plan 2022* specifically seeks to allow housing in the countryside for horse breeders, the provision of a new dwelling for eligible applicants, such as Mr. McKiernan, comprises one strand in the adopted strategy.

In this regard, while the rural housing test contains several criteria, an applicant need only comply with one of these tests as noted in the Report of the Inspector in appeal ref. PL27.231997 in the content of policy SS9 of the *Wicklow County Development Plan* (which is couched in strikingly similar terms):

'Policy SS9 is permissive of rural residential development in a variety of circumstances. These include the provision of a dwelling for a permanent native resident seeking to build a house for his/her own family and not as speculation. A permanent native resident is defined as a person who was either born and reared in the immediate vicinity of the proposed site OR (my emphasis) resided in the immediate environs of the proposed site for at least ten consecutive years prior to the application...The policy is also permissive of a dwelling for persons whose works is intrinsically linked to the rural area...'

We ask the Council to endorse four preliminary propositions. Firstly, that the applicant's eligibility for a house on this site should turn on Council policy, secondly, that this provision covers matters as diverse as agricultural occupation and rural employment, as well as other socio-economic traits; thirdly, that a qualifying candidate need only satisfy one of the listed tests to qualify for a dwelling and fourthly, in line with s3.2.3 of *Sustainable Rural Housing Guidelines*, that these criteria should not be applied so strictly by the Council so as to end up with a very rigid development control system. We consider that the applicant qualifies for a house on this land for reasons of long-time residency in this area, but also that he has a functional requirement for a farmhouse based on his equestrian work.¹¹

¹¹ The Council accepted that an applicant needed a house on the basis of equine activity in ref. SD20A/0279 in which the Report of the Planning Officer stated, at p. 14, that '*The applicant's agent has stated that in the case of an Equestrian Centre, the operator is required to live in close proximity to conduct regular and/or immediate checks if anything unusual is recorded...*'. The CEO Order opines '*In stating the requirements to be on-hand at the Equestrian Centre, the applicant has shown why a house is required on lands zoned for rural use*'.

(c) Equine Employment

Indeed, the acceptability of new dwellings in the open countryside for individuals working in the equestrian industry was expressly and explicitly acknowledged by An Bord Pleanala when overturning the decision of Kildare County Council to deny permission for a house at Straffan, Co Kildare under ref. PL09.212556 (reg. no. 05/560), with the Report of the Inspector stating, *inter alia*¹²:

'There is no question regarding the importance of the equine industry, including bloodstock, in County Kildare. It is indeed an integral part of the culture of the county and so also is the presence of landed estate houses and lodges, including those of stud farms. Such houses/lodges reflect the needs of the land use. I therefore accept the applicant's proposal as representing a reasonable need and I accept the applicant as having a bona fide involvement in the equine industry. I therefore accept the proposed lodge and its occupation by a person engaged in this particular stud farm enterprise as representing the proper planning and sustainable development of the area'.

We respectfully ask the Planning Authority to acknowledge that this planned equestrian business simply cannot succeed without on-site accommodation being provided, consistent with the approach of An Bord Pleanala when granting permission for a proposed dwelling outside Dunsany Co Meath under appeal reference no. PL17.219110. In that case, the Report of the Inspector opined as follows:

'I am satisfied that the Applicant meets a rural housing need requirement...Section 3.2 of the Sustainable Housing Guidelines states that employment circumstances considered to be intrinsically linked to rural areas would be characterised by, inter alia, persons involved in full time farming, forestry, inland waterway or marine related occupations or those that are related to agriculture / natural resources or whose work takes place predominantly in rural areas'.

More importantly, we have highlighted the fact that An Bord Pleanala has recently rejected an argument which is similar to the objection in this third reason for refusal in the case of appeal ref. PL06S.309969 (Council reg. SD21A/0009)¹³, in which the Report of the Planning Inspector stated:

'The proposed development is in an area zoned 'Objective RU; To protect and improve rural amenity and to provide for the development of agriculture' in Map 11A of the South Dublin County Council Development Plan 2016-2022. 7.1.2. Schedule 5 (Definition of Use Classes & Zoning Matrix Table) of the Plan indicates that 'residential' development is open for consideration in accordance with Council policy for residential development in rural areas. 'Agriculture' is permitted in principle.

Agriculture is defined in section 2(1) of the Planning & Development Act, 2000 (as amended). It 'includes ... the breeding and keeping of livestock (including any creature farming of land), the training of horses and the rearing of bloodstock, the use of land as grazing land, ... and "agricultural" shall be construed accordingly'. Therefore, the residential use may be consistent with the provisions of the Plan and the equine use is consistent with the provisions of the Plan in terms of zoning...'

We respectfully invite the County Council to accept that this agricultural and residential development is legally permissible on land which is located within the open countryside of South County Dublin.

We thus turn to the allied question of whether planning permission should be granted for this development proposal, in the light of the specific set of circumstances which surround this application.

¹² This extract is especially relevant to the current case given the 2.6km distance from the subject site to the boundary separating counties Kildare and Dublin, as illustrated in Aerial Image 2 on page 8 of this present report.

¹³ This case is discussed on pp. 13-14 above.

(ii) The Need for Accommodation

Sustainable Rural Housing seeks to arrest rural population decline, in recognition of the need to encourage rural development and aims to tailor planning policies to differing local conditions. We consider that national policy promotes flexibility in the application of rural eligibility tests and envisages that farmers, including horse breeders to erect new accommodation in the open countryside.

In assessing a candidate's eligibility, this policy warns against a rigid development control system, in reflection of the fact that planning policy recognises the tradition of people living in the countryside and the dispersed settlement pattern which exists in many rural areas. Indeed, consistent with *Sustainable Rural Housing Guidelines*, we invite South Dublin County Council to acknowledge and accept that such housing needs should be accommodated in the locale where they arise and, as shown below, the applicant is eligible for a house at Redgap, Rathcoole Co. Dublin for occupational reasons.

We consider that the Planning Authority's approach in the current case should be informed, not be the stance which it took in reg. SD21A/0009, but rather on the guidance in appeal ref. no. PL06S.309969:

'The applicant's compliance with the rural housing policy is a significant consideration in this planning application. Two previous planning applications have been refused on site for reasons including non-compliance with the rural housing policy and it formed the basis of the planning authority's first reason for refusal in the current application.

A substantial amount of documentation was submitted with the planning application to demonstrate the applicant's compliance with the rural housing policy. It is stated that the applicant lives at Landscape House, Saggart. This is approx. 7.1km north east of the site as the crow flies and approx. 10.4km/13 minute drive by way of the N7. It is also in an area zoned 'RU' in the South Dublin County Council Development Plan 2016-2022. It is stated that the applicant owns the 5.7 hectare landholding subject of the application, the site itself comprising 0.899 hectares, and intends to undertake a small-scale full-time business i.e. horse breeding. The 5.7 hectare holding is considered, by the applicant, to be adequate to allow the development to proceed commercially (Policy RH18 of the Kildare County Development Plan 2017-2023 gives an area of 5 hectares as the minimum required for a rural house and full-time viable commercial equine or other rural enterprise). The documentation outlines the applicant's background in equestrian activity...and a Business Plan was submitted as Appendix E of the Planning Submission...

Housing (H) Policy 20 in the County Development Plan 2016-2022 states 'It is the policy of the Council to restrict the spread of dwellings in the rural "RU" ... zones and to focus such housing into existing settlements'. Housing Policies 21 and 22 are also relevant policies. I will consider the proposed development in the context of H Policy 22 first. H22 Objective 1 outlines two scenarios where new or replacement dwellings will be considered in an RU zone. These are where the applicant has close family ties to the rural community or where the applicant can establish a genuine need to reside in proximity to their employment...

Policy H 21 states that persons working full-time or part-time in rural areas shall be favourably considered in relation to rural housing in accordance with the Sustainable Rural Housing Guidelines (2005) and Circular Letter SP 5/08. The Circular Letter states that a bone fide applicant who may not be living in the area or have family connections or be engaged in a particular employment or business within local need criteria should be given due consideration subject to three considerations. These considerations, and how the applicant complies are as follows. Commitment to operate a full-time business – I am satisfied, having regard to the documentation submitted with the application, that the applicant is committed to operating a full-time business. Contribute to and enhance the rural community – I am satisfied that a sport horse business would contribute to and enhance the rural community given that, by its nature it is largely a rural-based activity, would be consistent with the zoning objective and would use rural-type professionals and products such as veterinarians, feed, bedding etc.

Nature of business is compatible – I am satisfied the nature of the business is a rural based activity compatible with the local needs criteria for rural areas and it is generally location dependant’.

It is our view that the Planning Authority refused to apply the general principle that a farmer requires an independent farmhouse when deciding application reg. SD21A/0009 and we respectfully submit that its approach on that occasion, which was subsequently overturned by An Bord Pleanala, failed to appreciate that planning policy since the nineteen-seventies decade has candidly acknowledged that persons who are engaged in agricultural activities must live on the land which they are working and this is, in our opinion, especially the case where such individuals are engaged in animal husbandry.

Although the Report of the Planning Officer on this previous occasion criticised the fact that *‘the applicant has not demonstrated how this business cannot be attended to from the house already associated with the lands’*, this statement overlooks the fact that the adjacent dwelling is not in the ownership or control of the applicant and that Pearse McKiernan seeks his own farmhouse, from which he can have his own family and rear his own horses¹⁴. We are unaware of any precedent cases in which a farmer’s son or daughter, who are already working a family farm, were deemed ineligible for a house on that landholding because they, as married adults, must remain living with their parents¹⁵.

Equally, this third reason for refusal on the last occasion seems to suggest that persons who qualify for a rural house on the basis of their work in horse breeding should commute from the City (*‘there is urban housing options available a few minutes’ drive from the site in Rathcoole’*). Aside from the fact that this approach does not represent adopted policy and is inconsistent with the conclusion of the Board in appeal ref. PL06S.309969 (as discussed above), we observe how trips of strikingly similar distance or duration were frowned on by An Bord Pleanala when determining a previous appeal case:

‘The appellant is currently farming his father’s land located 3 – 4 km away...I would consider that the substantive issue why the applicant needs to locate on a site remote from the...land ...which he is engaged in farming...’.

As well as promoting growth in existing centres, the Council notes the need for rural housing and seeks to accommodate certain categories of applicant seeking to build a house in the countryside. The issue as to whether a qualifying candidate should be directed into a town was considered in appeal nos. PL09.218975 and PL09.218974 and while these cases turned on drainage, the Board accepted that eligible applicants should not be directed into nearby settlements. Indeed, the Report of the Inspector in appeal ref. PL27.232284 noted how applicants working with horses must live on farms:

‘I agree with the consultant that the applicant, being a farrier, cannot live and practice his profession in a normal settlement and consequently needs to reside in a rural area. The subject site, on the borders of Wicklow, is in close proximity to County Kildare... I take the view that a farrier is an intrinsic part of the rural community and because of the nature of his business is required to reside in a rural area...the applicant requires to live in a rural area and is a bona fide case for a one-off house in the countryside... the applicant qualifies for a one-off house in this rural area and conforms with the Sustainable Rural Housing Guidelines as a person working full time or part time in a rural area and also qualifies under Policy SS9 Category 15’.

It is axiomatic that farmers need to live beside their animals in order to secure their equipment, crops, flock or herd and to monitor, supervise, and manage the operation on a seven-day-per-week basis. In this regard, we draw support for this assertion from the decision of An Bord Pleanala in appeal ref. PL25.219110, in which the decision of Meath County Council to deny consent for a house in the countryside was reversed on appeal. The Report of the Inspector favoured the development, stating:

¹⁴ The applicant has also recently wed and requires his own marital home, which is separate from his parent’s house. We are unaware of any planning principle which requires a married couple to live in a parental dwelling.

¹⁵ Indeed, the Board has also accepted rural housing for staff members in ref. 243417 (Rheindross Stud Farm, Donadea, Co. Kildare and has endorsed new accommodation in the countryside for persons engaged in the tourist and service sectors under ref. nos. PL22.210528 (at Roscrea Golf Club) and PL16.235336 (staff housing at a nursing home outside Foxford, Co. Mayo).

'Section 3.2 of the Sustainable Housing Guidelines states that employment circumstances considered to be intrinsically linked to rural areas would be characterised by, inter alia, persons involved in full time farming, forestry, inland waterway or marine related occupations or those that are related to agriculture / natural resources or whose work takes place predominantly in rural areas. I consider it reasonable that...farm work comes within the definition of need in respect of employment circumstances...it is my opinion that the Applicant meets the criteria set out in the Sustainable Rural Housing Guidelines and the Meath County Development Plan in respect of proposals for dwellings outside designated development / settlement areas...'

The applicant's business plan, for which is appended to this report as Appendix Q, sets out the financial and related arrangements for the applicant's horse breeding operation and states as follows:

'Pearse McKiernan has leased an 8 Hectare (20 Acre) site (highlighted with a white border) and associated horse stalls and agricultural service buildings at Redgap, Rathcoole, County Dublin, from his parents. The land was previously used as part of a thoroughbred horse training and breeding establishment in which the applicant had managed for over a decade....'

Mr McKiernan wishes to develop his own stand-alone thoroughbred breeding establishment on the leased land. The development works required to set-up the business the residential element to ensure that the promoter is on site at for animal husbandry and birth monitoring purposes ...

The following chart sets out the strategic plan for the initial introduction of 5 broodmares into the business on the date of commencement and a procurement strategy to invest in the purchase of a further 3 broodmares per annum for the first four years of trading. This will leave the business with a broodmare stock of 15 at the end of year 4. During the five years of this business plan, it is reasonable to expect that this stock will produce forty-six foals as follows...The projected income and expenditure account shows surplus profits of €43k available to the Pearse McKiernan in year 1 rising to €82k in year 5 on sales of €65k in year 1 rising to €850k in year 5.

(iii) Regional Planning Policy

The Council's fourth reason for refusal on the last occasion, refers to the *Regional Spatial and Economic Strategy 2019 - 2025* and essentially paraphrases the provision at RPO 4.79 which, although referring to the need to identify and provide policies that recognise the contribution that small towns, villages and rural areas contribute to social and economic wellbeing, also seeks to support and protect rural economies such as valuable agricultural lands to ensure sustainable food supply, to protect the value and character of open countryside and to support the diversification of rural economies to create additional jobs and maximise opportunities. In doing so, however, the Council has completely overlooked the provision at RPO 4.80 which is relevant to the proposed development and which states:

'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'.

It is our opinion that a full-time horse breeder, with personal and direct responsibility for animals in his care and control, has a definable need to live on the land which he is farming and we draw support for this approach from the Board's decision in the case of appeal ref. PL06S.309969. It is axiomatic that An Bord Pleanála would not have granted planning permission for this separate horse breeder if it did not believe that an applicant who is engaged in this type of work did not satisfy s. 4.80 of RSES. The Report of the Inspector on that occasion did not specifically address the issue of compliance with regional planning policy, although this analysis noted, in respect of other national and local provisions:

'Policies H20, H21, and H22, and Circular Letter SP 5/08, all relate to rural housing. I consider that, to oversee the full-time operation of a sport horse business such as that proposed, a house would be a reasonable element of the development'.

9. Road Safety

(i) Introduction

The first and second reasons for refusal on the last occasion, which unite so as to create a single objection, stated that the local road network, because of its *'width and...poor vertical and horizontal alignment'*, lacking in *'pedestrian, public lighting and drainage facilities'* cannot accommodate this proposal on the basis that this one dwelling would *'endanger public safety by reason of traffic hazard'*.



Photograph 11: The McKiernan landholding benefits from a longstanding vehicular access

Aside from the fact that we disagree with this conclusion, we note that there appears to be a pattern or a trend emanating from the decisions by South Dublin County Council in relation to new housing in the countryside, to the effect that the rural road network surrounding the site cannot accommodate the additional traffic which would be generated by that development. In this regard, we invite the Planning Authority to observe how its recent decisions in the case of reg. nos. SD20A/0208 and SD21A/0009, both of which raised road safety concerns, were not endorsed by An Bord Pleanala¹⁶.

In the case of this latter development proposal, the Council's reason for refusal had stated as follows:

'The application site is located on a local roadway of narrow width and poor horizontal alignment, where vehicles have to give way when they meet another vehicle. The proposed development would result in an increase in vehicles accessing the site and an increase in the associated turning movements at the entrance to the site. The variety of vehicles that would be expected to visit a site of this nature would range from a car, car/jeep with horsebox, rigid horse lorry, up to HGV in size. This road is a relatively busy rural road during peak hours due to traffic which uses it to avoid the N7; it is rural in nature; it is substandard for the amount of traffic that uses it during peak times; and it is also without adequate facilities for pedestrians and other vulnerable road users. For the above reasons, the proposed development would endanger public safety by reason of traffic hazard'.

¹⁶ In the related planning appeals under Board ref. PL06S.308500 and PL06S.309969 respectively.

The Report of the Inspector, on appeal, had dismissed this approach, based on the following analysis:

'I consider that the increase in vehicular movement as a result of the proposed development, as set out in the reason for refusal, is overstated. While there would obviously be an increase, I do not consider it would be such that it would have any significant impact on the carrying capacity of the public road, and where adequate sightlines exist. The reason for refusal also refers to the variety of vehicles accessing the site. The grounds of appeal imply that a four-wheel drive vehicle towing a horse box or carrier would generally be the type of larger vehicle accessing the site'.



Photographs 12 & 13: The Local Road onto which the subject site fronts is linear in nature and allows motorists to observe oncoming traffic. In such situations, existing entrances are used as de facto passing points.



We respectfully invite the Planning Authority, when considering the adequacy of the rural road network which surrounds the application site to acknowledge the direction of the High Court in *Wicklow County Council -v- Fortune (No. 2)*¹⁷, which envisages a certain degree of practicality when considering issues of road safety and which cautioned against the trend of planning authorities to reach unfounded opinions on safety, without actually scientifically identifying the bases for such concerns¹⁸:

'It is true that the Council refused retention permission on the ground of the "narrow width and the poor alignment and unsurfaced nature of the road network" and this ground of objection was upheld by the Board on appeal, it cannot nonetheless be said that the entrance presents "a real and immediate traffic...hazard". ...some measure of realism must also enter the equation. Even though the lane leading to the site (which I found to be just over 4m. wide) was unsurfaced...it was otherwise in good condition. The volume of traffic using the lane is obviously small. The actual entrance to Ms. Fortune's site was nevertheless some 12m. wide and the view of the driver of any vehicle entering or exiting the site was not obscured in any significant way in either direction. While the planning specialist could doubtless discern the existence of a potential traffic hazard, the same could be said of virtually every country road and botharín in the entire county of Wicklow. If this were the test, the same objection could be levelled in respect of virtually every rural dweller in the county, nearly all of whose dwellings lead onto small country roads and lanes, many of them with even less room for manoeuvre and more restricted sight lines than I could discern in the present case. In these circumstances, one does not need to be a planning or traffic specialist to see that the site does not present a real and immediate traffic hazard...'

(ii) Access to Housing in the Countryside

In line with the *Fortune* decision, it is our view that the planning code accepts new one-off dwellings in areas that are not as well equipped with infrastructure as suburban estates and we draw support for this approach from the decision of An Bord Pleanála in appeal ref. PL09.245343, when it permitted:

'The construction of a one storey dwelling featuring attic accommodation and a single storey garage, all associated site works and proposed wastewater treatment system at Newtown Great, Eadestown, County Kildare'



Photograph 14: The road serving a proposed dwelling in the case of ref. PL09.245343.

¹⁷ *Wicklow County Council -v- Fortune (No. 2)* Neutral Citation: [2013] IEHC 255 High Court Record 2011 26 CA

¹⁸ This approach accords with *Damer-v-An Bord Pleanála*, in which Simons J. drew a distinction between a reasoning and a conclusion and stated that it was necessary for a decision-maker to explain the basis for any reasons for refusal.

The road which serves this earlier appeal site, which is illustrated in photograph 14 above, was discussed in the Report of the Inspector, which had accepted that this route was adequate, as follows:

'The site fronts onto a narrow laneway. The drawings as submitted indicate that satisfactory sightline visibility can be achieved in the context of the road serving the site. I would have no specific objections in relation to traffic.'

Also, in ref. PL27.242006, the Board endorsed Wicklow County Council's decision to permit a house outside Enniskerry under reg. 12/6307; although this proposal had originally involved a replacement dwelling, the building which had formerly stood on the land was in such a poor condition that, notwithstanding its continued occupation by an aged farmer up until his death, the substantial house which presently occupies the site bears no resemblance to the previous development on the property.

The Planning Authority may also wish to observe the width of an access road serving a new house outside Garristown, Co. Dublin, which was permitted by An Bord Pleanála under ref. PL06F.239000. This route, along with the carriageway in the case of appeal ref. PL27.242006, is illustrated overleaf.

(iii) Road Safety Factors

Accident statistics show that most crashes are caused by human error, accounting for over 80 per cent of fatal and injury crashes on Irish roads, with the main causes of death and injury being speeding (which alone accounts for over 40 per cent of fatalities), drink-driving and the non-wearing of seat-belts, with other factors comprising tailgating, poor lane discipline, not indicating and undertaking slower vehicles. Since most incidents are the product of several factors, the probability of accidents can be reduced by education (such as promoting refresher courses for older drivers), by the enforcement of traffic laws and by engineering measures relating to the design and condition of vehicles, including regular inspections and to the provision of proper driver signals and road signs.

The RSA *Road Safety Strategy 2013-2020* suggests (p.7) *'Ireland is now the fifth safest country in the European Union for road collision fatalities per million population'* and discusses causation (p.15):

'The contributory factors to road traffic collisions are many and varied. When combined, as they do in nearly every collision, they create a very complex picture of what actually happened. ...The contributory factors listed by An Garda Síochána on collision report forms between 2007 and 2011 showed that:

- Driver error accounted for 87% of all contributory factors identified in fatal collisions; pedestrian error accounted for 8%, road factors accounted for 2%, environment accounted for 1% and vehicle factors accounted for 1%.*
- The highest number of fatalities occurred in early evening rush hours, i.e. between 6:00pm and 7:00pm.*
- 333 people were killed in 301 fatal collisions between 9:00pm and 3:00am, the hours most strongly associated with drinking and driving; this period accounted for 26% of fatal collisions and 27% of fatalities.*
- 175 people were killed between 12 midnight and 3:00am. Fatalities that occurred during these hours accounted for approximately 14% of all road collision fatalities between 2007 and 2011'.*



Photographs 15 & 16: The roads which serve the proposed houses in the case of appeal nos. PL09.245343 and PL 06F.239000



(iv) Safety Assessment

Based on our observations, the road onto which this site fronts carries very little traffic and that how the few motorists who travel along this route drive at a very slow speed. As the applicant would be forced to live elsewhere in the event of permission for the proposed house being refused, such trips will not be needed should this dwelling be built and, in this regard, the proposed development would entail substituting domestic journeys trips for equestrian trips, on which basis, the number of vehicles using Local Road L-6019 would not change notably if the applicant builds his own home on this site.

The picture which thus emerges is of a low-profile rural route which, although restrictive in physical character, accommodates few cars and of a development which will, in itself, not change the local traffic conditions, given that the applicant would otherwise be required to travel to and from this land, possibly several times per day, to care for horses in his care. Indeed, to the degree that speed is a critical factor in most serious and fatal accidents, the physical characteristics of this particular carriageway requires motorists to drive at a slow pace and this, combined with the forward visibility associated with the linear alignment of the road, would prevent any threat to public safety occurring.

The local roads which lead to the application site are rather lightly-trafficked, with the few motorists who negotiate their way through this area generally travelling at a relatively slow pace; furthermore, drivers egressing from the proposed site entrance along the access route which is identified in the engineering papers have adequate advance notice of oncoming motorists and indeed, such individuals must slow considerably when negotiating the nearby junction. As a result and applying the logic in the *Fortune* judgment (above), we do not consider that this arrangement would prejudice road safety.

10. Concluding Comments

The Council has accepted that this holding can be used for equine purposes, that a dwelling is listed as '*open for consideration*' on this land under the RU objective, that the site layout is appropriate, that the scale of the house is satisfactory, that the proposal is visually acceptable and that the engineering arrangements comply with the relevant requirements. There is much to commend this proposal.

Although the first and second reasons for refusal in reg. SD21A/0073 query the ability of the local road network to accommodate this development, we do not share such concerns, partly on the basis that the journeys which the proposed house would generate would partly offset equine trips, to and from this site, should the applicant be forced to live elsewhere, in the event of permission being denied.

This network, which is lightly trafficked, is of a type which is found in rural areas throughout the country and we cannot identify any physical feature relating to its width or alignment which suggests that safety would be prejudiced. The judgement in *Wicklow County Council -v- Fortune (No. 2)* envisages a certain degree of practicality when considering issues of road safety and we do not believe that the carriageways leading to the application site are so deficient so as to give cause for concern.

We consider that Pearse McKiernan satisfies the rural housing policy on the basis that he wishes to build a dwelling on the extensive McKiernan family holding, on property where which he grew up, on a farm which he currently works and on a tract where he plans to operate his own independent equine facility. In the Council intimates that he should remain living in his parental home for all time ('*the applicant has not demonstrated how this business cannot be attended to from the house already associated with the lands*'), we do not believe that this approach accords with planning policy.



Farry Town Planning Ltd.