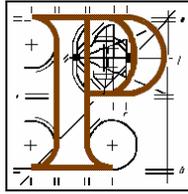


An Bord Pleanála



Inspector's Report

PL 06S 241613

DEVELOPMENT

Description: Construction of a house, polytunnel structure, rainwater storage tank and horticultural business with all associated site works.

Address: Glassamucky Brakes, Glenasmole, Tallaght, Dublin 24

PLANNING APPLICATION

Planning Authority: South Dublin County Council

Planning Authority Reg. Ref.: SD 12A / 0130

Applicant: G. Brophy and D. Nulty

Type of Application: Permission

Planning Authority Decision: Refuse

PLANNING APPEAL

Appellant(s): G. Brophy and D Nulty

Type of Appeal: 1st party – v – refusal

Observers: (i) An Taisce
(ii) Department of Environment, Community and Local Government

**DATE OF SITE INSPECTION
INSPECTOR:**

Paul Caprani

1.0 INTRODUCTION

PL06S.241613 relates to a 1st party appeal against the decision of South Dublin County Council to refuse planning permission for the construction of a house and polytunnel in connection with a horticultural business in Glenasmole in the foot of the Dublin Mountains in south County Dublin. Planning permission was refused on the grounds that the applicant failed to satisfy the genuine housing need criteria detailed in Policy H32 of the County Development Plan. The proposed development would therefore materially contravene the zoning objective and policies contained in the Plan.

2.0 SITE LOCATION AND DESCRIPTION

The appeal site is located in the townland of Glassamucky Brakes directly south of Knocklyon and Ballyboden and between the regional routes R114 and R115. Glassamucky is a rural area on the foothills of the Dublin Mountains. The road serving the appeal site runs in a south-easterly direction and accommodates a significant amount of one-off housing particularly to the southeast of the site. The appeal site comprises of a rectangular shaped field on the western slope of Piperstown Hill. The field is between 260 and 270 metres above sea level. There is a dwellinghouse located to the immediate south of the appeal site and two other single dwellinghouses are located on the opposite side of the road in the vicinity of the appeal site.

The site itself comprises of a rectangular field c.130 metres in depth and 80 metres in width and is currently under grass with some gorse growing within the field. A smaller field is located to the rear of the appeal site which is used for grazing purposes. Lands to the immediate north of the site accommodate a large areas of heather and gorse. This vegetation is also a characteristic of the lands to the rear of the site on the middle and upper reaches of Piperstown Hill. The overall site area is just less than 1 hectare. The front boundary of the site comprises of a random rubble wall with some intermittent hedging along the roadside boundary. The field is approximately 1.5 meters above road level. The road is a narrow but well surfaced road c.4 metres in width. The site is located approximately 100 meters north of the Glenasmole Valley SAC.

3.0 PROPOSED DEVELOPMENT

Planning permission is sought for the construction of a dwellinghouse and other ancillary works on site. The single storey house is to be setback approximately 50 metres from the road frontage. It is to incorporate split floor levels, the lowest being 276 metres above sea level rising to the rear to 278 metres above ground level. The maximum floor to ceiling height on the front (western) elevation is 4.6 metres. This is reduced to just less than 3.5 metres on the rear elevation. The dwellinghouse is a modern contemporary design with a flat grass roof and incorporating a floor area of approximately 254 square metres. The dwellinghouse is set out in three separate components. The area nearest a road with a finished floor area of 276 metres AOD incorporates the main living/dining room kitchen area. The central portion of the dwellinghouse incorporates the main entrance on its northern elevation and accommodates the hallway and utility areas. The rear of the dwellinghouse incorporates the broadest part of the structure (c.21 metres in width) accommodates three bedrooms on a finished floor area of 278 AOD.

Parking associated with the proposed dwellinghouse is to be located in an excavated area adjacent to the front boundary. The ground level of the car park is to be similar to that of the adjoining roadway and a series of steps are to provide a pedestrian access to the dwellinghouse.

To the rear of the dwellinghouse it is proposed to construct a large polytunnel (30 metres in length) set out on a galvanised tubular steel frame. It is also proposed to provide a 2.3 metre high water tank adjacent to the polytunnel. The tank will store harvested rainwater from the site. An outdoor market gardening/planting area is to be located in the upper reaches to the rear of the site. A proprietary wastewater treatment plant (a klargester - reed bed system is to be installed to the rear of the growing area). The existing hedgerows along the parameter of the site are to be augmented with new planting.

4.0 DOCUMENTATION SUBMITTED WITH THE PLANNING APPLICATION

A number of detailed reports were submitted with the planning application and these are briefly summarised below.

4.1 Water Services Reports

A water services report was prepared by Downs and Associates Consulting Engineers. It notes that there are no public foul or surface water sewers in the vicinity of the site. There is however an existing watermain beneath the existing Glassamucky Road adjacent to the sites western boundary. South Dublin County Council has advised that water supply for the proposed development could be taken from the existing watermain.

In terms of foul water, it is proposed that the foul sewer from the dwelling will discharge by gravity into a new concrete pump chamber to the rear of the house. The chamber sump will provide storage for approximately 3.6 cubic metres of foul sewage (2 days storage). The foul effluent will be pumped from the pumping chamber at the rear of the house to an area towards the north-western boundary where it will fall by gravity through four klargester proprietary reed beds and from there into a treatment system. The highly treated effluent will then be dispersed via a percolation area. Details of the various treatment processes are set out in the report appendices.

In terms of surface water drainage design it is stated that SUDS will form a significant part of the surface water drainage proposals for the project. A number of appendices are attached which detail design calculations for soak-away and foul treatment systems. A site characterisation assessment form for the onsite wastewater treatment system is also contained in an appendix. Details of the proposed proprietary wastewater treatment systems are set out in the appendices. Details of the proposed permeable paving specification for surface water attenuation are also attached to an appendix.

4.2 A Hydrological Characterisation Report

A hydrological characterisation and risk assessment report was submitted. This report sets out the bedrock geology and details the water quality data and the surrounding watercourses. The report goes on to assess the risk to water quality arising from the proposed development. It concludes that the developer recognises the high value of the environmentally sensitive areas that lie down gradient of the proposed development as the site is located approximately 110 metres to the northwest of the Glenasmole Valley SAC. This SAC is designated due to the high diversity of habitats on plant communities. It concludes

that the wastewater system is designed to treat the effluent to a very high standard with very low levels of BOD, suspended solids, total nitrogen and total phosphorus. There are also significant separation distances between the potential sources of pollution and the SAC. And it is concluded that the proposed development will not present a risk to groundwater at the SAC of the reservoir. A number of academic papers are attached to this hydrogeology report.

4.2 Natura Impact Statement

A Natura Impact Statement was prepared and submitted by Scott Cawley.

On foot of a screening assessment it was concluded that the likelihood of significant negative effects on the Glenasmole Valley cSAC could not objectively be ruled out and therefore an Appropriate Assessment of the proposed development would need to be carried out. The NIS concludes that the likely impact on the integrity of the SAC after corrective implementation of all the mitigation measures including the high specification standards set out for the wastewater treatment plant will result in no likely significant residual negative impacts. It is concluded therefore that the proposed development will not have a significant negative effect on the integrity of the SAC/SPA. It is also noted that in addition to the sensitive design measures, organic fertiliser will be used for the organic nursery. There will be an exclusion of organic fertiliser application to open ground areas away from potted plant routes.

4.3 Planning Report

The Planning Report sets out the site location and description and the nature and extent of the proposed development. The Planning Report also outlines the proposed horticultural business which is to be carried out on site. After investigations it was concluded that the site is suitable for the propagation of types of heather similar to the flora in the area in pots and/or containers initially in the polytunnel and then in open beds on site. It is also proposed to trial the propagation of rosemary and thyme. Initially the business will be part-time but after five years it is hoped to dedicate more time to running the business at a point where it provides full time employment for at least one person.

The Planning Report goes on to outline the planning history associated with the site.

The report also notes that preplanning consultation took place with South Dublin County Council and the main points arising from the meeting are set out in the report.

Development Plan policy which relates to the site is set out in the report. In relation to housing need it is stated that the applicants fulfil the requirements of the Development Plan on the following grounds. The applicants are currently residing at one of the applicant's parents' house in Friarstown. Circumstances dictated that the applicants had to buy a house in Tallaght in July 2005 even though it was their desire to live in the Bohernabreena area. It was always the applicant's intention to move to the Glenasmole/Bohernabreena area. To reaffirm their commitment and close links to the area they've vacated their joint property in October 2007 and moved in with the applicant's parents' house in Friarstown. They are currently renting out their property to South Dublin County Council for a minimum of eight years.

The applicant was aware that the County Council were applying policies in relation to housing need from 2002 onwards. The applicant and her father met with the County Council Planning Department with the specific purpose of ascertaining whether or not the applicant met the criteria in relation to housing need. As she was a daughter of persons from the study area, she evidently met the definition of a person who qualified for new housing in the area. It was on this basis that the application site was purchased in July 2007. The applicant has only spent two of the last 18 years outside this local area. The applicants have demonstrated an overwhelming commitment to the area and to living in the community by purchasing the application site. It is submitted that the proposed development will not be undermined in this instance even though the proposed development is not directly related to the areas amenity potential or its use for agriculture, mountain or hill farming.

A series of photomontages are attached indicating that the proposed development will not adversely affect the visual amenities of the area. Documentation is attached in relation to housing need. This includes a marriage certificate, various banking documentation etc.

Also attached is a Business Plan.

A report was also submitted in relation to the proposed dwelling design. The report states that the overall size and scale of the development has been substantially reduced from that previously refused on site. It is also stated that the applicant has adopted a highly sustainable approach towards the dwelling design and the applicant recognises that the site is located within a sensitive area and has carried out significant changes to the design in order to limit impact to the visual amenity and character of the area. A series of photomontages are attached which depicts the impact of the dwelling in the context of the surrounding environment.

4.4 Planning Authority's Initial Assessment of the Application

A letter was submitted by the applicants' parents stating they are a young couple with a young family and they genuinely need to have a home and have focussed all their finances on the dream of living in the area where the applicant was reared.

An observation was also submitted by An Taisce objecting to the proposed development.

An initial report dated 02/08/2012 notes that the application is very similar to the most recent one refused and that the proposal constitutes undesirable ribbon development on a substandard rural road which will lead to a demand for the uneconomic provision of services and would set an undesirable precedent for further similar developments in the area. However if a grant of planning permission is being considered a number of conditions are set out which should be attached.

A separate report from the Environmental Health Department states that the proposed development is acceptable subject to conditions.

The Environmental Services Planning Report states that there is no objection subject to conditions.

A Planners Report is contained on file which sets out the site description and the proposed development and a reference to the internal reports received in relation to the proposal. The report goes on to outline in detail the planning history associated with the site and also makes reference to other housing applications in the area which were refused planning permission.

In terms of zoning the Planners Report notes that the zoning objective for the site is Objective H 'to protect and enhance the outstanding

natural character of the Dublin Mountains areas'. Residential development is open for consideration provided it is located below the 350 metre contour and accords with the policies and objectives set out in the Development Plan. In accordance with the provisions of the Rural Housing Guidelines, it is considered that the application site constitutes a rural area under strong urban influence by reason of its proximity to Dublin City. It is noted that applications for rural dwellings in the study area were refused permission by An Bord Pleanála for failure to comply with the Development Plan zoning objective and the Sustainable Rural Housing Guidelines for Planning Authorities in terms of catering for genuine rural housing in an area under strong urban influence. The report states that the decisions of An Bord Pleanála indicate that the criteria set out in the Glenasmole/Bohernabreena study are not consistent with the Rural Housing Guidelines in relation to the development of one-off houses in the area and cannot prevail over the policies of the Rural Housing Guidelines or Development Plan policies.

Having regard to the information submitted by the applicants in relation to housing need, it is considered that the applicants comply with the rural housing policy as contained in Section 9.2.1 of the Glenasmole/Bohernabreena housing and planning study. Having assessed the proposed development including the proposed horticultural centre it is considered that the applicant has not satisfactorily demonstrated the viability or practicality of the proposed horticultural business. It is considered that the proposed development would not prejudice the environmental capacity of the area and would be in-keeping with the character of the mountain area.

In this regard the Planners Report concluded that in order to comply with Policy H32 of the Development Plan, additional information would be required. Therefore further information was requested in relation to the viability of the business including niche markets, financing etc. The applicants were therefore requested to submit further information in this regard.

Further Information Submitted

The applicant submitted further information on the 14th December 2012. It consisted of a revised Business Plan. It states that the development of the business proposal was assisted by a very experienced company "lifelong plants" and the applicants have also availed of the support of a mentor through the south Dublin County Enterprise Board. The applicants will have the advantage of constructing the family home on

the same site of the business. The reduced overhead contributes to lower costs and assisting gross marginal and profitability. The Business Plan includes feedback from a number of targeted customers who have provided written expressions of interest on the product range. Details of the financial projection of the Business Plan are also set out.

In relation to competitor pricing it is stated that it is difficult to ascertain competitor pricing in writing.

However through discussion with future customers regarding the product risks and pricing strategy the applicants are confident that the pricing strategy is competitive. Details of the start-up costs of the proposed business are also set out. Since the planning application was submitted in June 2012, the applicants have secured an investment from an experienced business investor. The applicants will continue in their current employment until the business is financially stable at which time it is planned that one of them will work on a full-time basis for the business.

Details of the Business Plans are attached.

A further Planning Report was produced on foot of this information. It states that the applicant has submitted a comprehensive response to the request for additional information including the production of a Business Plan with detailed appendices. The information submitted by the applicant in response to the additional information request is set out.

The inspectors report goes on to note that the applicants have submitted a comprehensive Business Plan which has satisfactorily addressed the issues raised by the South Dublin County Enterprise Board. However the justification for the requirement to live adjacent to the proposed business is considered not to be sufficient. It is considered that in this case the applicant has not adequately demonstrated that it is a necessity to reside in close proximity to the proposed business. The advantages of living in close proximity to the business as outlined by the applicant in his response to the grounds of appeal are not sufficient justification for the placement of a dwellinghouse at this location. Furthermore it is stated that the applicants will continue in their present employment until the business develops and this may limit the success or otherwise of the proposed business. It is therefore considered in conclusion that the proposal fails to demonstrate compliance with Policy H32 in that the applicant has not demonstrated a genuine need for

housing in this location. Planning permission was refused for this sole reason on the 16th January 2013.

5.0 PLANNING HISTORY

No history files are attached to the current appeal file although details in relation to planning history are set out in the Planning Report submitted with the initial application and also details are set out in the local authority Planning Report in relation to planning history associated with the site. This history is briefly summarised below.

Under **SD11A/0137** planning permission was refused to the current applicants for the construction of a single storey split level 3-bedroomed house, the formation of a new vehicular access onto the Glassamucky Road, together with a parking area for vehicles and a pedestrian footpath to the house. Planning permission was refused for the following reasons.

1. The proposed development is located in close proximity to a Special Area of Conservation and having regard to the introduction of a horticulture business on site it is considered that the submitted Appropriate Assessment is inadequate as it fails to address the potential impacts of the entire development and the Appropriate Assessment has not demonstrated that the development would not prejudice the environmental capacity of the SAC and proposed Natural Heritage Area and to public health.
2. Having regard to the proposed access arrangements and the absence of a vehicular access to the northeast sector of the site, the layout and the details of the horticultural business it is considered that the proposed dwelling and commercial business are conflicting land uses and the applicant has failed to demonstrate that the proposal is viable and feasible on the subject site. As such development is not directly related to the areas amenity potential or is it used for agriculture, mountain or hill farming. It is considered that the proposed development would materially contravene the zoning objective for the area and policies regarding rural housing in the County Development Plan 2010-2016 and would therefore be contrary to the proper planning and sustainable development of the area.

Under **SD10A/0002** South Dublin County Council refused planning permission to the applicants for the retention of a scrub/hedgerow removal along the site front boundary and permission was refused for a part single-storey part 2-storey 4-bedroomed dwelling, demolition and reconstruction of part of the existing site boundary wall. Planning permission was refused for four reasons on the grounds that

- The applicant failed to demonstrate compliance with the housing need criteria in the Development Plan.
- The proposed house would be at variance with the Development Plan criteria in relation to the citing and design of new dwellinghouses in rural areas and would interfere with the upland rural character of the landscape and protected views.
- The proposed development would be prejudicial to the environmental capacity of the SAC and proposed Natural Heritage Area by reason of the proposed wastewater treatment system on a restricted site and concerns were also expressed in relation to potential water contamination in proximity to the SAC/pNHA and the failure to submit a statement for Appropriate Assessment.
- The proposal constituted undesirable “ribbon development” on a substandard rural road.

Under **SD08A/0672** planning permission was refused to the applicant for a part single-storey part 2-storey 4-bedroomed dwelling, demolition and reconstruction of part of the existing site boundary wall to Glassamucky Road and new vehicular entrance with gates, wastewater treatment system and all associated works. Planning permission was refused for five reasons relating to

- The applicant’s failure to demonstrate that the proposal would satisfy a genuine rural generated housing need and the contravention of the “Sustainable Rural Housing Guidelines for Planning Authorities”.
- The development would result in the interference with an upland rural setting and character of the landscape and interfere with protected views of natural beauty by reason of the proposed intrusive cutting and filling of substantial sections of visually prominent hillside in an elevated location.
- Visual obtrusive and contravention of Development Plan policy to avoid suburban type development in rural areas by reason of upland positioning of the site on the hillside, the excessive height and the scale of the part 2-storey part dormer dwelling.

- Prejudicial to public health and a threat to public water supply by reason of the location of the proposed development including the wastewater treatment in an area where it is recommended that development be restricted (slope of greater than 20%).
- Endangerment of public safety by reason of a traffic hazard.

6.0 GROUNDS OF APPEAL

The grounds of appeal outline the background and context of the proposed development. It states that the applicants are currently residing in the home of one of their parents in Friarstown Bohernabreena. Since that time they have been embarking on a process of seeking planning permission on the subject site but nevertheless remain in their parents' house, notwithstanding the fact they have started a family and their son has been enrolled to start the local school in September 2016. The applicants purchased the application site with a mortgage in July 2007 with the intention of building their own home. The applicants were advised that they met the criteria of a person who would qualify for new housing in the area as set out in Section 9.2.1 of the Glenasmole/Bohernabreena housing and planning study of November 2002 in that she was born in the study area and has immediate family ties with the rural community. It was on this basis that the applicants decided to proceed with the application. The grounds of appeal go on to outline the relevant planning history with the application site which it is argued clearly demonstrates the applicants overwhelming personal commitment to living in the community in question. It is noted that none of the previous planning applications were subject to an appeal to An Bord Pleanála. On each occasion it was decided to address the concerns of the Planning Authority. However the applicants are of the impression that there has been a lack of consistency in the approach of the County Council to development on the site. The grounds of appeal go on to detail the proposed development. In relation to the proposed horticultural business it is stated that the viability of the proposed business was demonstrated by a detailed expert assessment and a comprehensive Business Plan.

In accordance with the provisions of the Development Plan it is noted that the proposal is "open for consideration" under the zoning objective. It is submitted that there is no dispute that the applicants are native to the area and that the applicants have demonstrated a genuine need for housing in the area in the vicinity of their family. They purchased the subject lands with a mortgage and their financial situation does not allow

them to service mortgages on both the lands of the subject site and on property they own in Ellensborough in Tallaght which has been let to South Dublin County Council until October 2015 under the Rental Accommodation Scheme. The purchase of this property occurred in July 2005 and was dictated by circumstances at the time, notwithstanding the fact it had always been the applicants desire to live in the Bohernabreena area. At the time houses for sale in the area were simply beyond the applicants means.

Effectively the applicants are homeless at present as they have been unable to secure permission for their family home and cannot live in their property in Tallaght until October 2015 at the earliest. Even if the property in Tallaght was available to them, the applicants financial situation does not allow them to service mortgages on both properties and the subject site. If they were to sell their house in Tallaght it would not cover the mortgage therefore renting the property seems the only option available. The applicants seek to build a home on the subject site and commit themselves to running a viable horticultural business which is compatible with the area. It is submitted that the purpose of the Development Plan policies to secure the long-term viability of the rural community of Glenasmole/Bohernabreena and facilitating young couples such as the applicants who want to make a home in the area. The comprehensive supporting documentation has demonstrated that the proposed development will not prejudice the environmental capacity of the area and in particular the adjacent SAC and pNHA (Appropriate Assessment and Horticultural Report).

The proposed development fully complies with Policy H36 in that the development is not located in any of the restricted areas in the planning study area is not within 100 metres of a stream, is not within 200 metres of a reservoir and is below the 350 metre contour and is located on lands that has a slope of less than 20%. The proposed development is less than a density of one house per acre which is recommended in the Development Plan.

In relation to Policy H42 clustering cannot be achieved in this instance. However the site does have road frontage in excess of 60 metres and therefore complies with this policy. The proposal also includes for the replanting of a hedgerow along the roadside boundary and the restoration of part of the retaining boundary wall. The proposed dwelling is a low rise single storey structure that is compatible with the particular site conditions and is not dominant, intrusive or incongruous in the landscape. The planning application includes a series of photomontage

views and based on these views the County Council is satisfied that although the proposed development is an addition to the landscape, the impact when viewed towards Piperstown Hill will not be significant.

Notwithstanding the contention of the proposed development fully complies with the Development Plan, the Planning Authority requested additional information. The County Council noted in its assessment of the further information that the Enterprise Board considered that the revised Business Plan satisfactorily addresses the main issues it raised and deemed the proposal to be an acceptable horticultural business at this location.

Notwithstanding all the above, the County Council came to the conclusion that the requirement to live adjacent to the proposed business has not been justified in this case. It is stated that living beside the business will reduce overheads and costs in the start-up period which will result in greater profitability and these represent sufficient justifications for the proposed house. It is submitted that the County Councils have been dismissive of the details in cogent business case made by the applicants.

Reference is made to Circular SP508 which sets out further details in relation to housing need and this Circular highlights the requirements that development management processes do not discriminate against planning applicants wishing to establish a full-time home based business in the area in favour of those who are deemed to qualify as locals through a particular local needs assessment criteria. Policy H30 does not provide for planning applicants wishing to establish a full-time home based business in an area as required by Circular SP5/08. It is also suggested that Policy H32 is contrary to Circular SP5/8. An Bord Pleanála is therefore requested to overturn the decision of the Planning Authority and grant planning permission for the dwellinghouse.

7.0 APPEAL RESPONSES

A response submitted by the Planning Authority merely states that the Planning Authority confirms its decision and the issues raised in the appeal have been covered in the Planners Report.

8.0 OBSERVATIONS

Two observations have been submitted.

8.1 An Taisce Observation

The submission from An Taisce seeks to support the decision of South Dublin County Council. Reference is made to the planning history associated with the site and the reason given by the applicant for the application was a desire to build and live in the Glassamucky area. It is stated that desire to live in a particular area does not constitute a need to live there. It is noted that in the previous applications, the reason put forward by the applicant was her intention to set up a B&B in the house. Another application relied on personal financial problems as justification to obtain planning permission on the site. Under the current application the applicant states that in addition to personal financial problems they require planning permission in order to set up a horticultural business. There appears to be no consistency on the part of the applicants for the reasons they put forward for needing a house on site. An Taisce believes that the applicants have failed to demonstrate a genuine housing need for the house. The subject site is located in an area under strong urban influence and therefore it is subject to the policy to restrict new housing in the countryside to that required to meet rural generated housing need. It is also located within an area which is zoned to protect and enhance the outstanding natural character of the Dublin Mountain area. Views along the Glassamucky Road are protected under the Development Plan. Therefore the Planning Authority is obliged to pay particular attention to the location of the proposed development notwithstanding Circular SP5/08 or any other considerations. It is quite clear that the Planning Authority is not convinced on the merits of the proposed development and An Taisce share such misgivings. There is an undesirability of permitting a house on a site in order to establish a heather growing activity there.

8.2 Submission from the Department of Arts, Heritage and the Gaeltacht

The Development Application Unit was requested to submit observations to An Bord Pleanála on foot of the appeal. It is stated that the project should be the subject to an Appropriate Assessment screening and if necessary a full AA. It is noted that the candidate SAC (Glenasmole Valley SAC) is a hydrologically sensitive habitat having petrifying springs present which are a priority habitat under the Habitats

Directive. Special consideration should be given by An Bord Pleanála to the impact of the candidate SAC on any proposed water abstraction or discharges either from surface water or groundwater. With regard to the horticultural business the issues of water consumption and the use of fertilisers and pesticides needs to be considered as well as the accidental release of any invasive flora.

A further submission from An Taisce endorses the issues raised by the Department.

8.3 Further Submission from the Applicant

The applicant submitted a response with regard to the recommendation of the Department of Arts, Heritage and the Gaeltacht. Two copies of the Natura Impact Statement and the hydrogeological characterisation and risk assessment report are attached to the submission. The applicants' agent was in communication with the Department in connection with their recommendations and it would appear that they did not receive either report in the referral from the Board. It is submitted that the contents of the above report adequately addresses any issues the Department might have.

9.0 PLANNING POLICY RELATING TO THE SITE

9.1 Development Plan Provision

The site is governed by the policies and provisions contained in the South Dublin County Council Development Plan 2010-2016. The planning application site is zoned Objective H which seeks to “protect and enhance the outstanding natural character of the Dublin Mountain area”.

Dwellinghouses are open for consideration under zoning Objective H provided they are not permitted above the 350 metre contour and are otherwise in accordance with Council policy for development in rural areas. Home based economic activities are only permitted in existing premises.

Section 1.2 of the Development Plan specifically relates to housing. In relation to housing need, it is considered that there is both sufficient capacity and wide distribution of zoned land around the county to

provide a housing choice and meet the demand to accommodate the county's future population.

Policy H29 states it is the policy of the Council to restrict the spread of one-off housing into rural mountain, Liffey Valley and high amenity zones (Zones B, H, I and G) and to encourage such houses where acceptable into existing village nuclei subject to the availability of necessary services.

It also states that the Council will seek to facilitate a cluster type residential development on Council owned land in Bohernabreena in an effort to satisfy local housing need for applicants who do not have access to appropriate sites in the general Bohernabreena/Glenasmole area.

Policy H30 relates to rural housing policies and local need criteria. It is the policy of the Council that in accordance with Sustainable Rural Housing Guidelines and in accordance with Circular SP5/08 persons who are an intrinsic part of the rural community are persons working full time or part time in rural areas as described under Section 3.2.3 of the Sustainable Rural Housing Guidelines shall be favourably considered in relation to rural housing. Rural generated housing arises where the applicant is indigenous to the rural area or has close family links to the rural area or 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 the rural based employment. Urban generated housing arises where the applicant has no indigenous links to the rural area, currently lives and works in an urban area and wishes to live in a rural area.

Policy H32 specifically relates to the Dublin Mountain zone. It states it is the policy of the Council that within areas designated zoning Objective H 'to protect and enhance the outstanding natural character of the Dublin Mountain area' new or replacement dwellings will only be permitted where

- The applicant is a native of the area.
- The applicant can demonstrate a genuine need for housing in that particular area.
- Development is directly related to the areas amenity potential or its use for 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.

These criteria are in accordance with the Sustainable Rural Housing Guidelines having regard to the outstanding character of the area and to its exceptional landscape quality.

Policy H33 states that it is the policy of the Council within areas designated with zoning Objective H to consider permitting new or replacement dwellings on suitable sites where exceptional health circumstances exist whether such circumstances relate to the applicants themselves or whether the applicant is a person such as a registered general nurse, caring, nurturing and looking after the health and well-being of an immediate elderly family member or a relation to the community in a professional capacity that would otherwise require hospitalisation.

Policy H36 which relates to the Glenasmole/Bohernabreena area states it is the policy of the Council that development is generally prohibited within restricted areas as shown on Figure 6 of the Bohernabreena/Glenasmole Housing and Planning Study (2002) or as may be reviewed and amended from time to time following consultation with local residents and elected representatives in accordance with Development Plan policy SCR2, community information and consultation. This includes the significant areas of the reservoir catchment which is used as a water supply for domestic use in human consumption. Any proposed development within the study area will be subject to criteria and constraints set out in the study giving due regard to the assessment requirements of the Habitats Directive regarding the protection of the integrity of Natura 2000 sites.

The area covered by the study is outlined in the Development Plan maps (The site is included within the study area). The full text of the study is included in Appendix 8. Policy H37 which relates to rural communities in Glenasmole, Bohernabreena and Brittas states that it is the policy of the Council to seek to ensure the long-term viability of the rural communities of these areas and to this end will facilitate local residents who wish to build a family home in their local area.

Westerly and easterly views along the adjoining section of the Glassamucky Road are also designated for preservation.

9.2 The Glenasmole/Bohernabreena Housing and Planning Study 2002

Details of this study which was carried out in 2002 are contained in Appendix 8 of the Development Plan.

The study area includes the areas of Friarstown, Glenasmole and Cunard.

The plan specifically seeks to balance the needs of local residents to that of the wider community and the following approach was adopted.

- Identification of areas where restrictions on new housings must apply.
- Identification of areas where development can be accepted within the study area (non-restricted areas) and
- Identification for criteria for the assessment of proposals for housing within the study area.

New development will be prohibited in restricted areas shown on Figure 6 and these areas include 100 metres from stream, 200 metres from around reservoirs, lands above the 350 metre contour level, areas with slopes greater than 20% and lands covered by proposed Special Areas of Conservation. This policy is essential given the extreme vulnerability of the sensitive mountain area and the potential impact of development on the water supply of Dublin City and County. The capacity of the area for development is severely limited and new housing would have severe negative impacts.

Deviations from the policy will only be permitted in extremely limited circumstances where the proposal involves the reconstruction of a derelict dwelling or replacement dwellinghouse and where the building is substantially intact. Any replacement dwellings shall be in the location of the existing building and the existing building shall be demolished prior to the commencement of construction of the new dwelling. The criteria for housing need set out shall apply to this development.

The proposed development is located in a non-restricted area.

Section 9.3 of the study sets out details in relation to design criteria. It states that new dwellings should not be prominent on the landscape. As far as possible the landscape including existing trees should provide a backdrop to new development. In upland areas dwellings should be

located below the brow of existing hills. The building of houses on platforms or on top of hills would normally be unacceptable.

New roofs should be blue/black or grey slate in colour having a pitch of less than 40°. Concrete roof tiles or guarded colours should be avoided. Simpler traditional forms will be encouraged. Complicated roof plans or unfamiliar shapes should be avoided such as mansard roofs, flat roofs and mono pitched roofs. A well designed single storey house will generally be less conspicuous in a sensitive landscape.

Section 9.2 of the study sets out criteria of persons who qualify for new houses these include:

- Persons who are born in the study area
- Persons who have resided in the study area for at least 15 years and who do not own a dwelling and who have not owned a dwelling in the past.
- Persons who have immediate ties with the rural community i.e. they are sons or daughters or grandchildren of persons in the study area.

9.3 Rural Housing Planning Guidelines

Section 3.2.3 of the Rural Housing Planning Guidelines suggest the broad categories of circumstances which Planning Authorities should consider in assessing rural generated housing need. These include

- Persons who are an intrinsic part of the rural community.
- Persons working full-time or part-time in rural areas.

Expanding on the Rural Policy Framework in the NSS the Rural Housing Guidelines provide that people who are part of the rural community should be facilitated by the planning system in all rural areas including those under strong urban based pressures. The development of the rural environment of major urban areas, including the gateways and hubs identified in the NSS and county and other larger towns over 5,000 in population needs to be carefully managed in order to assure the orderly development and successful functioning into the future. The principles set out in these Guidelines also require that new houses in rural areas be sited and designed to integrate well with their physical surroundings and generally be compatible with

- The protection of water quality and the arrangements made for onsite wastewater disposal systems.

- The provision of a safe means of access in relation to road and public safety.
- The conservation of sensitive areas such as natural habitats, the environs of protected structures and other aspects of heritage.

10.0 PLANNING ASSESSMENT

I have read the entire contents of the file and inspected the site and have had particular regard to the Planning Authority's reason for refusal and the grounds of appeal relating to that refusal. I consider the two most important issues in determining the application and appeal before the Board are

- (a) The potential environmental impact arising from the proposed development and
- (b) The issue of housing need and the housing policy criteria set out in the Development Plan and the Glenasmole/Bohernabreena Housing and Planning Study (2002)

10.1 Potential Environmental Impact Arising from the Proposed Development

The site and its surroundings are extremely sensitive both from a planning and environmental point of view. Glenasmole/Bohernabreena area lies on the foothills of the Dublin Mountain and constitutes a highly picturesque and scenic area. Environmentally the area hosts the upper and lower Glenasmole reservoirs which are an important source of water supply for the Dublin City area. In addition the site is located approximately 110 metres from the boundary of the Glenasmole Valley SAC (site code 001209). The main qualifying interests associated with the SAC are the unique flora and fauna induced by patches or calcareous fen and petrifying springs.

The main potential environmental threats arising from the proposed development relate to the pollution of groundwater which feed the calcareous fens and which could adversely affect the vegetation associated with these fens as well as potentially polluting the water supply of the Glenasmole reservoirs. The pollution could arise from

- (a) The proprietary wastewater treatment system proposed to serve the dwelling or from

- (b) The application of fertilisers as a result of the proposed horticultural activities on site.

In relation to the threat from the proprietary wastewater treatment system on site, I note that a very high level of treatment is proposed in this instance. The system includes a primary, secondary and tertiary treatment. The high specification of the wastewater treatment system which includes a klargester BAP bio disc sewage treatment system, two Bord ná Mona purea-flow treatment system tanks and a reed bed filter system together with polishing filters. The incorporation of multi-unit treatment processes should result in a very high standard of effluent discharge. The information contained on file suggests that BOD and suspended solids levels will be less than 5mg per litre while total nitrogen would be less than 20mg per litre and total phosphorus would be less than 2mg per litre. I note that from the information contained on file that, notwithstanding the level of treatment proposed, that nitrogen levels of up to 20mg per litre would be still be high. This issue alone could give rise to some cause for concern. The EPA Code of Practice (Table 5.1) requires a maximum concentration for total nitrogen of 5mg per litre for nutrient sensitive locations. It could be reasonably argued in my view that the site in question is nutrient sensitive having regard to the sites proximity to calcareous fens, petrifying springs and drinking water reservoirs. If the Board are minded to grant planning permission for the proposed development I would recommend that a condition be attached to ensure that nitrogen levels are reduced in accordance with the standards set out in the EPA Guidelines.

The site appears to have reasonably good percolation characteristics particularly in the upper horizon of the soils (see P-value tests). A T-value of 70 may be considered slightly high, however the fact that the site incorporates a significant slope would suggest that any inherent percolation problems would be somewhat compensated for by the slopes natural topography. The fact that no bedrock or groundwater was encountered during the trial hole excavation would suggest that the site has adequate inherent attenuation capabilities (see photographs attached). I am satisfied therefore that the site, assisted by the engineering solutions set out in terms of the proprietary wastewater treatment plant proposed, together with the proposed polishing filters, would be capable of accommodating an onsite wastewater treatment system without adversely impacting on the sensitive receptors referred to above.

An additional potential threat to groundwater arises from the proposed horticultural practice. It is stated in the hydrogeological assessment report submitted with the planning application that there will be no input from chemically derived products on either the land or crops. All fertilisers will be added to pots and thus nutrients will be contained and retained within the pots before being exported from the site.

There are no details of the nutrient loadings associated with the horticultural business. However I would generally be satisfied that the nutrient loadings in terms of fertiliser would be significantly less than that associated with normal agricultural practices. The fact that the fertilisers (other than those associated with the polytunnel) will not be spread on open land would lead to the conclusion that the potential impact from excessive fertiliser input would be negligible. This will significantly reduce the potential of the environmental impact of the nutrient loadings associated with the horticultural activity.

Finally I note that the applicant has carried out a separate hydrogeological study and an NIS evaluating the environmental impact arising from the proposal. Having assessed these two documents I would be in agreement that the proposed wastewater treatment plant together with the horticultural nursery is unlikely to have a significant impact on the environmental integrity of either the surface water reservoirs or the SAC in the vicinity of the site.

10.2 Housing Need

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.

With regard to the applicant's personal circumstances, the following facts are particularly impertinent.

- The professionals of the applicant as listed in the planning application form are described as "project manager" and "engineer".
- The applicants are the owners of the site in question
- One of the applicant's families has lived in Friarstown since 1993 and one of the applicants has lived in the family home until 2005. In July 2005 the applicants bought a house in Kiltipper, Dublin 24. The information submitted with the planning application stated that houses in Bohernabreena and the surrounding area were at this time beyond the applicant's means.
- It is stated that in 2007 the applicants moved back to the parent's house and have lived there ever since. The house purchased by the applicants in Kiltipper is now rented out to South Dublin County Council under contract until October 2015.
- The current site was bought by the applicants in July 2007 for the purposes of building a family home. This site was bought on the understanding that the applicant met the criteria set out in the Glassamole/Bohernabreena housing study (2002).

In terms of the applicant's compliance with policy H32 of the Development Plan, I would point out that the applicant must comply with **all the criteria** set out and need not just comply with one of the criteria as is often the case in other development plans in relation to housing need.

The Planning Authority appeared to accept that the applicant is a native of the area with the family living approximately 2 kilometres away in Friarstown, which is within the boundary of the Glensasamole/Bohernabreena housing study. It is also accepted that

one of the applicants has resided for a substantial part of her life in the immediate area of the site.

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. The An Taisce submission also raised similar concerns suggesting that there is no consistency in the reasons or justification for the proposed dwellinghouse and that different reasons have been used in previous planning applications in order to justify the proposed dwellinghouse. I do not consider that the Board or South Dublin County Council can question the applicant's motivation, commitment or *raison d'être* 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.

Such applicants, the circular suggests, "should reasonably be required to satisfy the Planning Authority of their commitment to operate a full-time 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.

Thus if one were to apply the criteria set out in the National Guidelines and the National Circular in relation to housing need, it could be reasonably argued in this instance that the applicant has demonstrated a housing need in accordance with the tests or criteria set out.

The Development Plan however sets out a more stringent test in my view. The Development Plan requires the applicant to “demonstrate a genuine need for housing in that particular area”. It is assumed that such a stringent test is predicated on the fact that the foothills of the Dublin Mountains represent a very desirable place to live in the southern environs of the city and as a result this whole area is under very strong urban based pressure for development. The Planning Authority in my view is therefore justified to apply very stringent policies and tests in relation to controlling development in this area. The applicant in my view has not demonstrated any specific need to reside and develop a house adjacent to the proposed horticultural business. The applicant argues that developing a house on the same site reduces overheads and costs for the start-up period and thus this results in potentially greater profitability and this is of critical importance. It should be borne in mind that the applicant currently owns a dwellinghouse at Ellensborough at Kiltipper, Dublin 24. The dwellinghouse is approximately 3.5 kilometres from the appeal site (as the crow flies) and circa 6.5 kilometres from the site by road. Having an existing house in such close proximity to the proposed horticultural business would not in my view dramatically impact in terms of overheads and start-up costs to that of having a dwellinghouse on site. In fact it could be reasonably argued that the additional costs of building a dwellinghouse on the site in question would result in a significant initial overhead in the start-up of any business. It would seem more reasonable that a business such as that proposed could be developed on the site in the absence of a dwelling house and then the viability of the business could be ascertained in terms of full-time and part time employment etc prior to any decision being made on whether or not to develop a dwelling house on site.

In addition to compliance with policy H32 of the Development Plan, the Board should also have regard to the policies and provisions contained in the Glenasmole/Bohernabreena Housing and Planning study which forms appendix 8 of the Development Plan. The plan is very prescriptive with regard to suitable locations for housing. Section 8.1.2 of the plan state that new developments will be prohibited in restricted areas showing in figure 6 and these areas include

- 100 metres from streams.
- 200 metres from reservoirs.
- Lands above the 350 metre contour line.
- Areas with slopes greater than 20%.
- Areas covered by proposed special area of conservation.

Figure 6 maps these restricted areas. It is clear from this map that the vast majority of the site in question incorporates slopes greater than 20% and as a result this area would be precluded from residential development. I do acknowledge however that there is a small area within the site where the house is to be located which incorporates a slope of less than 20% whether or not this would exempt the proposed dwellinghouse from the restrictions set out in relation to the overall site in the planning study is debateable in my view. Another important consideration is the policy to promote clustered developments within specific land banks identified in figure 6 of this planning study. Two areas are identified both of which are north of the appeal site and as such the site is located outside these designated cluster areas.

Lastly in relation to the planning and housing study section 9.3 relates to design criteria. In terms of form and plan the study favours simpler traditional forms of dwellinghouses. Complicated roof plans and unfamiliar shapes should be avoided such as mansard roofs, flat roofs and monopitched roofs. A well designed single-storey house will generally be less conspicuous in such sensitive landscapes. While the proposed dwellinghouse in this instance is single-storey it does incorporate a flat/monopitch roof which would appear to be contrary to the design criteria set out in the local area plan.

Arising from my assessment above I consider that the applicant has in some respects demonstrated a genuine housing need in accordance with national criteria and guidance namely the Sustainable Rural Housing Guidelines for Planning Authorities (April 2005) and Circular SP5-08 however it appears to me that notwithstanding these Guidelines,

and Circular referred to above, that the current South Dublin County Council Development Plan (which was adopted subsequent to the Guideline referred to above), has adopted a very strict criteria in relation to assessing applications for rural housing need. Such strict criteria in my view is justifiable having regard to the development pressure exerted on the area in question. I consider that the applicant has not demonstrated a genuine housing need in accordance with the criteria set out in the Development Plan and I therefore recommend that the decision of the Planning Authority be upheld in this instance and that planning permission be refused for the proposed development based on the Reasons and Considerations set out below.

11.0 DECISION

Refuse planning permission based on the Reasons and Considerations set out below.

REASONS AND CONSIDERATIONS

1. It is considered that the applicants have not demonstrated a genuine need for housing at this particular location in accordance with the criteria set out under Policy H32 of the South Dublin County Council Development Plan 2010 – 2016. As such, the proposed development would materially contravene the zoning objective for the area and policies regarding rural housing in the County Development Plan and would therefore be contrary to the proper planning and sustainable development of the area.

**Paul Caprani,
Senior Planning Inspector.**

7th June, 2013.

cr/ymc