



An
Bord
Pleanála

Inspector's Report

ABP-307268-20

Development	Demolition of house, construction of replacement house, new wall, landscaping and all associated site works.
Location	Holloweds Hill, Redgap, Rathcoole, Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD19A/0317
Applicant(s)	Robert and Helen Kavanagh.
Type of Application	Permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Observer(s)	Ruth and Alan Thompson.
Date of Site Inspection	20 th August 2020
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The appeal site is located at Holloweds Hill, Redgap, approx. 900m south of Rathcoole village and in a rural part of west County Dublin. The site is on the east side of Rathcoole Hill Road, part of a cluster of rural houses along this stretch of the road.
- 1.2. The site contains a two-storey house, a detached shed and a private garden, on a plot of 0.3ha.
- 1.3. The site is enclosed by post and rail fencing along the east and west boundaries, by mature trees along the south boundary and by a low-level stone wall along the north boundary, parallel to the road. The site access is shared with the east-adjoining property, with both entrances framed by a stone wall and controlled access gate.
- 1.4. There are a mix of house types in the area, including bungalows, dormer bungalows and contemporary designs and there is also evidence of ribbon development along the road. The area is elevated, with land levels rising in a southerly direction.

2.0 Proposed Development

- 2.1. The proposed development consists of demolition of the existing house on the site and the construction of a replacement 2-storey, 4-bedroom house, along with associated hard and soft landscaping, SUDS drainage and associated works.
- 2.2. The demolition works have a stated area of 285sqm. According to the appeal documents, the house was built in 2005 and is now considered unfit for purpose, having been recently purchased by the appellants.
- 2.3. The proposed replacement house has a contemporary architectural design, with a maximum flat roof height of 8.01m and with a gross floor area of 490sqm.
- 2.4. A new garden wall would extend from the west end of the house to the west property boundary, measuring 2m high and enclosing the rear garden.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. On 9th April 2020 South Dublin County Council refused permission for two reasons, as follows:

1. *Having regard to:*

(i) *The 'RU' land-use zoning objective, and*

(ii) *the Rural Housing Strategy contained in the South Dublin County Development Plan 2016 – 2022, in particular Policy H22 Objective 1 which states new or replacement dwellings within areas designated within Zoning objective 'RU' will be considered where:*

-The applicant can establish a genuine need to reside in proximity to their employment (such employment being related to the rural community) OR

- The applicant has close family ties with the rural community.

The development as proposed, in the absence of a genuine rural generated housing need and no close family ties with the rural community, and the absence of evidence of exceptional circumstances to replace a dwelling, materially contravenes the policy and objectives of the South Dublin County Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

2. *The proposed development would set an undesirable precedent for other similar urban generated housing development in a 'RU' zoned area, which would in themselves and cumulatively, be harmful to the rural amenities of the area, contravenes the 'RU' zoning objective and would be contrary to the proper planning and sustainable development of the area.*

3.2. Planning Authority Reports

3.2.1. Planning Reports dated 28th November 2019 and 9th April 2020, which reflect the decision to refuse permission. The report dated 28th November 2019 recommended that Additional Information be sought in relation to a number of aspects of the proposed

development, seeking (1) detailed documentation to justify the proposed development in the context of development plan requirements; (2) detailed documentation which set out the exceptional circumstances which justify a replacement house; (3) a shadow impact assessment to demonstrate the potential impact on the adjoining property to the east; (4) surface water drainage proposals; (5) proposed water supply layout; and (6) details relating to the site wastewater treatment system. The report dated 9th April 2020 followed receipt of the Additional Information response and recommended refusal of permission, for two reasons. The Notification of Decision to Refuse Permission is generally in accordance with the recommended reasons for refusal.

3.2.2. Other Technical Reports

Water Services Department – Undated reports have been provided, the first of which requested additional information relating to surface water drainage proposals and the second of which outlined no objection, subject to a number of standard planning conditions.

Roads Department – Report dated 6th November 2019, which outlined no objection subject to one standard planning condition.

Environmental Health Department – Report dated 6th November 2019, which outlined no objection subject to a number of standard planning conditions.

Parks and Landscape Services / Public Realm – Report dated 14th November 2019, requesting that as part of any grant of permission, a condition should attach requiring the submission of a tree report, including tree survey, impact assessment and protection proposals.

3.3. Prescribed Bodies

3.3.1. None

3.4. Third Party Observations

A number of letters of objection were received, the issues raised within which can be summarised as follows:

- Concerns regarding ownership of the caretaker's lodge

- Concerns regarding the loss of resident support services and amenities.
- Concerns that the proposed change of use is not consistent with condition 3 of F05A/1172.
- Concerns that the applicant has not discussed the proposal with apartment owners.
- Concerns that the proposed development is not in keeping with the proper planning and sustainable development of the overall site.

4.0 Planning History

SD04A/0408 – Permission granted on 24th November 2004 for a two-storey residence, together with retention and renovation of existing cottage converted to stables and demolition of old outhouse and sheds. Permission was also granted for construction of a new septic tank and percolation area, together with ancillary site works to construct new sight lines.

Relevant nearby planning history

There is an extensive planning history in the immediate area. Recent applications include:

SD18A/0011 – (ABP Ref. ABP-301367-18) Outline permission refused on 17th September 2018 for a house. The refusal reasons cited the absence of demonstrable links to the community, a contribution toward ribbon development in the area, visual impact, cumulative impacts on public services and amenities and road safety concerns.

SD16A/0312 – (ABP Ref. PL 06S.247577) Permission refused on 20th March 2017 for a single storey, four bed house and associated development. The refusal reasons cited a failure to demonstrate exceptional circumstances for a house in this location, road safety concerns, concerns relating to the extent of site development works required as part of the development and a failure to provide adequate road frontage

SD16A/0089 - Permission refused on 9th May 2016 for construction of a house and associated development.

SD15A/0346 - Permission refused on 21st January 2016 for redevelopment and extension of a barn, to provide a dwelling, together with associated development.

SD15A/0239 - Permission and retention permission granted on 21st December 2015 for amendments to single storey detached dwelling, treatment plant and percolation area permitted under planning reference SD02A/0180

5.0 Policy Context

5.1. Sustainable Rural Housing Guidelines for Planning Authorities

5.1.1. The Guidelines identify categories of circumstance, which assist in determining whether an applicant has demonstrated a rural generated housing need. In particular the Guidelines refer to 'Persons who are an intrinsic part of the rural community' and 'Persons working full-time or part-time in rural areas'.

5.1.2. Persons who are an intrinsic part of the community are identified as having "*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.*"

5.1.3. Persons working full-time or part-time in rural areas are identified as "*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 linked to rural areas such as teachers in rural schools or other persons whose work predominantly takes place within rural areas.*"

5.2. Development Plan

5.2.1. The subject site is zoned 'RU' under the South Dublin County Development Plan 2016-2022, with an objective "*to protect and improve rural amenity and to provide for the development of agriculture.*"

5.2.2. Section 2.5 of the Development Plan contains the Planning Authority's Rural Housing Strategy. Policy H20 is the overarching policy control for such housing, outlining that:

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

5.2.3. Subsequent policies within the Section outline separate approaches to the different rural zones and also in relation to replacement house and house extensions.

5.2.4. Policy H22 is directly relevant to the proposed development, where it states:

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

5.2.5. H22 Objective 1 clarifies the application of this policy, outlining that it is an objective of the Council:

"To consider new or replacement dwellings within areas designated with Zoning Objective "RU"...where (i) The applicant can establish a genuine need to reside in proximity to their employment (such employment being related to the rural community) or (ii) the applicant has close family ties with the rural community."

5.2.6. Policy H25 is also directly relevant to the proposed development, where it states:

"It is the policy of the Council to consider applications for replacement dwellings in rural and high amenity areas where there is a genuine need for refurbishment and/or replacement."

5.2.7. H25 Objective 1 clarifies the application of this policy, outlining that favourable consideration will be given to such proposals, when the following criteria are met:

- *"There is a genuine need for replacement or refurbishment of the structure; and*
- *The roof, internal walls and external walls of the structure on site are substantially intact; and*
- *The structure on site is a habitable dwelling and its use as a habitable dwelling has not been abandoned (for a period that exceeds 5 years); and*
- *The structure on site is of limited value in terms of built heritage, character and visual amenity; and*

- *The replacement dwelling would largely occupy the same footprint, scale and location of the dwelling to be replaced, save in exceptional circumstances where the Planning Authority agrees a more favourable position in the context of the development management criteria outlined in Chapter 11 Implementation.”*

5.3. Natural Heritage Designations

- 5.3.1. The subject site is not located within or adjacent to any designated European Site.

5.4. EIA Screening

- 5.4.1. Having regard to the limited nature and scale of the proposed development it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The grounds of appeal can be summarised as follows
- The proposed development is appropriate to the existing pattern of development in the area.
 - There are a variety of house sizes and designs in the area.
 - The replacement house substantially aligns with the existing house, with a minimum increase in ridge height.
 - It is appropriate that a substantial increase in the area of the house on the site should be provided, based on current needs and requirements, for example those brought about by the recent lockdown situation.
 - The proposed development complies with Development Plan principles.

- The zoning objective applying to the site seeks to protect amenity as a primary concern and the Planning Authority's assessment of such impacts determined that there would be none.
- The Planning Authority's description of the development as a material contravention is based on a narrow interpretation of the wording of the development plan.
- It is a mistake to apply Policy H22 in the current circumstance. The prohibition within the development plan on replacement houses is intended to preclude the use of buildings that are no longer suitable for habitation, as justification for a proposed new house. The existing house is of recent construction and is capable of being occupied in the future but, it does not meet the appellants' requirements and it does not make sense to retain it. Recent amendments to the Building Regulations, which require substantial improvements to the fabric of an existing house where more than 25% of the fabric of the building is proposed to be changed, make it difficult to incorporate external walls of existing buildings, whilst achieving updated standards and requirements.
- The Board is enabled by legislation to grant permission, despite the Planning Authority's description of the development as a material contravention.
- There are no environmental or other planning reasons to justify a refusal of permission.
- There are no infractions of third party rights or amenities.
- The proposed development would not establish an undesirable precedent.
 - A substantial portion of the existing house is being retained and the areas of demolition are consistent with government guidelines, particularly building regulations.

6.1.2. As part of the appeal, it is suggested that the height of proposed balcony rail for the balcony area to the rear could be increased to 1.8m, in order to ensure overlooking of neighbouring properties would not arise.

6.2. Planning Authority Response

6.2.1. A response was received outside of the specified period.

6.3. Observations

6.3.1. Pursuant to a notice under Section 131 of the Planning and Development Act, 2000, a single letter of observation has been received, the issues raised within which can be summarised as follows:

- The observers objected at the planning application stage and do not believe sufficient evidence has been put forward to allow the Planning Authority's decision be overturned.
 - The proposed design is not low-key and does not respect the surrounding built form.
 - Reference is made to development plan Housing policy 22, which applies to replacement houses. In refusing similar applications, the Planning Authority has referenced the negative visual impact on the rural landscape.
 - The proposed house is outside the footprint of the existing house and brings it 6.7m closer to the observers' house. The observers' amenity space is adjacent to the proposed house, facing west, and it will be overshadowed by a square gable wall 7.5m high and 8m wide. This element will be overshadowing and overbearing, as is shown by the shadow analysis submitted with the application.
- The Board is requested to, should it be minded to grant permission, omit the 2-storey element or have it reduced to single storey, in order to address the observers' concerns.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the first-party appeal in detail, the main planning issues in the assessment of the proposed development are as follows:

- Principle of development;
- Scale of replacement house
- Impact on neighbouring properties;
- Other Issues;

- Appropriate Assessment.

7.2. Principle of Development

- 7.2.1. The subject site is zoned 'RU', Rural and Agriculture, and in such locations development plan Policy H22 outlines that replacement houses will only be permitted in exceptional circumstances, where an applicant establishes a genuine need to reside in proximity to their employment or where they have close family ties with the rural community.
- 7.2.2. From the information provided within the application documents, I consider the appellants have no demonstrable need to reside in this location, arising from their employment, and they have not demonstrated any close family ties with the local area. The application documents confirm that the appellants are originally from Tallaght and have most recently been living in Saggart and have purchased the subject property as it is suited to their needs, in relation to access to their public house businesses in Tallaght, Naas, Clonee and Leixlip. The requirements of Policy H22 have not been satisfied and, on this basis, I consider the proposed development to be a material contravention of the development plan.
- 7.2.3. I note the claim within the grounds of appeal, that it is inappropriate to apply Policy H22 in this instance, as the development comprises an infill development within an established community. Whilst there has clearly been an amount of residential development in the area, I do not accept that it is an established community; it is a rural lane proximate to, but outside of the local village centre of Rathcoole and which has experienced ribbon development. I consider the area displays the characteristics of a rural area under strong urban influence. The development plan is clear in its restrictive approach to rural housing in this area, that such proposals will only be permitted in exceptional circumstances, and there is no exemption or exception made for replacement houses.

7.3. Scale of Replacement House

- 7.4. The Planning Authority did not cite Policy H25 'Replacement Rural Dwellings' within the reasons for refusal. The Board may therefore consider this to be a new issue.
- 7.5. The criteria to be met for replacement houses, set out at H25 Objective 1, includes a requirement that there should be a genuine need for replacement or refurbishment of

the structure. Compliance with these criteria is not directly addressed within the grounds of appeal, but the appellant's argument in relation to this issue appears to be that the existing house is no longer fit for purpose, in that it is substandard in terms of its thermal efficiency and that it would be very difficult to retain large elements of the building, whilst complying with up-to-date building regulations requirements.

- 7.6. Thermal upgrades to existing housing stock may indeed be complex, but I do not consider this is adequate justification to demolish a house which is of relatively recent construction. There are options available which would improve the thermal efficiency of the existing house, i.e. additional insulation and other domestic upgrades, which would improve its performance and which would allow it to be retained. The issue of embedded energy also arises, with a proposal to demolish and replace a house which is less than 20 years old. If there are thermal efficiency issues specific to the house that are so serious that they warrant its demolition, these should be clearly outlined, so that there is a clear understanding of the issues and an informed decision can be made.
- 7.7. H25 Objective 1 also outlines that a replacement house should be similar in terms of footprint, scale and location to the house it would replace. The proposal would occupy the same location as the existing house but it is significantly larger in terms of its scale, its gross floor area stated as being 205sqm larger. I do not accept the appellant's argument that such an increase in scale is justifiable on the basis of current lifestyle requirements and recent experiences with significant household movement restrictions.

7.8. Impact on Neighbouring Properties

- 7.8.1. The contemporary design of the replacement house is broadly acceptable. However, I have some concerns relating to a number of aspects.
- 7.8.2. The replacement house would encroach further toward the east property boundary, extending to within 4.4m of the boundary and c.10m of the west end of the adjoining house. I note that the owners of this adjoining house have submitted an observation, raising concerns in relation to overshadowing. The shading study submitted at the additional information stage identifies that some overshadowing of the west end of the adjoining house would occur on March 21st and September 21st and whilst I do not

consider it is sufficient to justify a refusal in isolation, there is adequate space within the site to reconsider the overarching design and layout, in order to ensure that overshadowing of the east-adjointing neighbour would not occur. Should the Board be minded to grant permission for the development, this may be an issue to be addressed prior to a decision being made.

- 7.8.3. The first floor element would also encroach toward the rear south property boundary, providing a master bedroom and external terrace in closer proximity to the shared boundary with the south-adjointing property. Whilst I consider the large south-facing master bedroom window is acceptable, the proposed terrace area would magnify the potential for overlooking of the neighbouring rear garden, to the detriment of the privacy of the adjoining occupiers. As part of the appeal, the applicant has proposed to increase the height of the privacy screen surrounding this terrace to 1.8m. This amendment would improve the relationship of the development to the adjoining neighbour and can be controlled by condition, should the Board be minded to grant permission.

7.9. **Other Issues**

- 7.9.1. It was evident on my inspection of the site that an amount of clearance has taken place, adjacent to the front boundary. This has exposed the front of the site, which appears to have been raised as part of its function as a percolation area. The raised area has not been manicured or landscaped in order to blend into the landscape and the exposure of this part of the site to public views has a negative visual impact. Should the Board be minded to grant permission, it would be appropriate to require a landscaping plan for the site, which should include proposals to reprofile the front-most part of the site.

7.10. **Appropriate Assessment**

- 7.10.1. Having regard to the nature and scale of the proposed development, which is a small-scale residential development, outside of any Natura 2000 sites, I do not consider that any Appropriate Assessment issues arise and I do not consider that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

- 8.1. I recommend that permission for the proposed development be refused, for the following reasons and considerations set out below.

9.0 Reasons and Considerations

- 9.1. The site is located in an area under strong urban influence, in accordance with the Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April, 2005, and is subject to the zoning objective RU '*To protect and improve rural amenity and to provide for the development of agriculture*', under the South Dublin County Development Plan 2016-2022, where it is the policy of the planning authority to restrict residential development. Having regard to the provisions of Section 2.5 'Rural Housing Strategy' of the development plan, it is considered that exceptional circumstances do not apply, which justify the proposed replacement house. The proposed development would therefore be contrary to the zoning objective for the area, the rural housing strategy contained within the county development plan and would also be contrary to the proper planning and sustainable development of the area.

Barry O'Donnell
Planning Inspector

21st October 2020