

# An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** PL06D.246174

**Development:** Revised storm water and foul waste-water disposal arrangements for house permitted under ABP Ref.: PL06D.242929 and DLRCC Ref. No.: D13A/0424, at Ashton Killiney Hill Road, Co. Dublin.

### Planning Application

**Planning Authority:** Dún Laoghaire-Rathdown County Council

**Planning Authority Reg. Ref.:** D15A/0734

**Applicant:** Kevin and Anne Mac Nicholas

**Planning Authority Decision:** Refuse Permission

### Planning Appeal

**Appellant(s):** As Above

**Type of Appeal:** 1<sup>st</sup> Party

**Observers:** John & Maureen Callaghan

**Date of Site Inspection:** 24<sup>th</sup> May 2016

**Inspector:** Fiona Tynan

## **1.0 SITE LOCATION AND DESCRIPTION**

The appeal site is located west of Killiney Hill Road. It is accessed via a private driveway located at an 80 degree angle to the Road. The access is controlled by means of electric gate recessed from the road edge and provides access to two houses on site, Hillview and Ashton. The said access driveway circumvents a tennis court and an area of overgrown grass before splitting to provide access to Hillview. Hillview is a two storey detached dwelling house which overlooks the access driveway. The driveway also provides access to Ashton, which is further controlled by means of electronic gates. I was unable to access the property of Ashton on the day of the site visit. Adjacent to the latter gates is a turret with fitted windows which appeared in good condition though uninhabited.

The site rises sharply from the road edge with Killiney Hill Road. However the appeal site has a more gradual incline from east to west with an increase of almost 5m occurring across the site. The appeal site has a number of trees on the site which appear to be mature and in reasonable condition.

The appeal site abuts the residential development of Killiney Heath, a development of detached single storey dwellings on large sites connected by a central access spine. A traditional farmyard gate connects the appeal site to Killiney Heath, it presently does not appear to be in use.

Attached to this report are a number of photographs taken on the day of the site visit.

## **2.0 PROPOSED DEVELOPMENT**

The Applicant was granted permission for a dwelling house on the site under PL06D.242929. The terms of that permission included a proposal to connect into the public sewer at Killiney Heath, a residential development which abuts the Applicant's landholding. The owners of Hillview who share the access driveway into Ashton, have withheld their consent to allow the applicants to put the services for the said dwelling along the access driveway. Consequently, the Applicants have sought to vary their permission to provide for storm water and foul wastewater disposal arrangements to service the proposed dwelling. This will comprise of the following:

- Biocycle wastewater treatment plant,
- 25 sq.m. area x 1.5m over ground level sand polishing filter,
- 3000 l. underground rainwater harvesting tank,
- 8m x 4m x 0.5m over ground level surface water soakaway and associated drains and details of permeable surfaces to driveway and patios.

## **3.0 PLANNING HISTORY**

**A.B.P. Ref. PL06D.242929/ Reg. Ref. D13A/0424:** Refers to a grant of permission by the Planning Authority and upheld by An Bord Pleanála for a new 2 storey, 4 bedroom detached dwelling house and site development works in an Architectural Conservation Area. This application proposed a connection to the public drainage system in the neighbouring Killiney Heath residential development. In the reasons and considerations issued by the Board the following is stated:

*“Having regard to the residential zoning objective for the area, to the size of the proposed site and the pattern of development in the area, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not adversely impact on the character of the Architectural Conservation Area in which it is located, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area”.*

**A.B.P. Ref. PL06D.242926 / Reg. Ref. D13A/0445:** Refers to a grant of permission issued by the Planning Authority for the construction of a house and all associated site works in an Architectural Conservation Area at “Ashton”, Killiney Hill Road, Killiney, Co. Dublin. Following a third party appeal, the decision was overturned and the Board issued a refusal of permission for the following reason:

*“Having regard to the site location in a residentially zoned area where public foul sewer infrastructure is available to service the proposed dwelling, it is considered that the proposal to service the dwelling off an-site wastewater treatment and disposal system represents an unnecessary and unwarranted potential risk to public health and would set an undesirable precedent for similar developments in the area. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area”.*

## **4.0 PLANNING AUTHORITY DECISION**

### **4.1 Planning and technical reports**

Drainage Planning: The surface water drainage section has no objection to the proposal subject to conditions.

E.H.O.: The Report outlines *“connection to the main sewer as it is available is the best option in the interest of public health. I recommend refusal of this application for the installation of a wastewater treatment system as a public sewer is available”*. Reference is made to Section 5.1.1.5 of the Development Plan which recommends *“the policy to strongly discourage the provision of domestic wastewater treatment system where applicable to connect the development to a public mains network in order to minimise the risk of ground water pollution”*.

Irish Water: The Report outlines no objections subject to conditions.

Planner's Report: The Report refers to the planning history of the subject site and the permission pertaining to the site. The Planning Officer notes the difficulty presented by the Applicant to connect via the shared access driveway to the existing public drainage system in Killiney Heath. However, the issues of legal consent and ownership are stated to be outside the remit of the Planning Authority. The Planning Officer concludes that the Environmental Health Officer considers that the connection to the main sewer is the best option for the site, in the interest of public health. Thereafter, a recommendation to refuse permission is issued.

## 4.2 Planning Authority Decision

On the 22<sup>nd</sup> of January 2016, Dún Laoghaire-Rathdown County Council issued a decision to refuse permission for the revised storm-water and foul waste-water disposal arrangements for the permitted house at Ashton, Killiney, Hill Road, Co. Dublin. The one reason for refusing permission is stated as follows:

1. *There is a public sewer available to service the proposed dwelling. It is considered that the installation of wastewater treatment system is unacceptable as connection to the main sewer is available, this is considered the best option to service the dwelling in the interest of public health. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.*

## 5.0 GROUNDS OF APPEAL

This is a first party appeal by Kevin and Anne MacNicholas against the decision of Dún Laoghaire-Rathdown County Council to refuse permission for the proposed development in the grounds of Ashton, Killiney Hill Road, Co. Dublin. The submission prepared by Auveen Byrne Associates on behalf of the Applicants, seeks to highlight the following:

- An account of the planning history of the site is provided. Two applications were previously considered by the Planning Authority and the Board which the Applicant argues provided alternatives in terms of servicing the site. Under D13A/0424 it was proposed to connect the new house to public sewerage c. 150m distant in an adjoining housing development Killiney Heath. Under D13A/0445 it was proposed to provide a Biocycle wastewater treatment facility and polishing filter within the application site. Otherwise the proposals were exactly similar.
- Dún Laoghaire Rathdown County Council granted permission for the two proposals.
- Both decisions were appealed by third parties.
- In the Board's decision to refuse permission for the wastewater treatment plant, the wording was amended to state "potential" before "risk to public health".
- At the time of lodgement of D13A/0445, the proposal for the house served by the wastewater treatment plant, the MacNicholas' concern was the cost or

running sewers in Killiney Heath to the point of public connection. However, since then, an intractable issue has arisen. Between the site of the proposed house and the public road (cul-de-sac head) at Killiney Heath, is a driveway which is in the joint ownership of the MacNicholas and their neighbours Derek and Dawn Richardson. The consent of the Richardsons to the works under the driveway is required, which consent is withheld.

- The Richardsons' are residents of "Hillside" which is attached to "Aston" to its north-east". They are joint owners with MacNicholas' of the access gateway to the properties from Killiney Hill Road.
- By letter dated 02/09/2014, the Richardsons' solicitor advised the MacNicholas' that consent to any works under the driveway would not be forthcoming.
- The Applicants now find themselves in the position that the grant of permission for their dwelling, ref. no. PL06D.242926 / D13A/0424, cannot be implemented.
- Under D13A/0445, the Appellants, the Richardsons submitted a report of Dr. Eugene Bolton of Trinity Green Environmental Consultants where it was argued that the site characterisation report submitted with the application was inadequate.
- In response the Applicants commissioned a report of Envirpro Environmental Consultants, dated February 2014.
- The alleged site characterisation difficulties arose due to shallow bedrock on site. This is not a problem if treated effluent is discharged sufficiently high above bedrock. The proposal is to carry out tertiary treatment of effluent by way of a sand polishing filter above ground level. This addressed Dr. Bolton's concerns regarding the sizing of the polishing filter and disposal of effluent to ground. The Envirpro Report notes the intention of the applicant to implement the Planning Authority's requirements for compliance with DUDS/GSDSDS, probably involving the installation of a water harvesting unit, in combination with a purpose designed attenuation tank.
- The Board's sole concern was that, in the context that disposal of foul effluent to the public piped system was apparently available at the time, the proposal in D13A/0445 was considered an "Unnecessary and unwarranted potential risk to human health and would set an undesirable precedent for similar developments in the area".
- In the context where the disposal of foul effluent to the public piped system is not available, the proposed on-site arrangements are necessary to serve the development.
- The Board's Inspector did not consider the arrangements proposed under D13A/0445 posed any threat to trees to be retained on site. He considered that the issue was the protection of retained trees during the construction phase of the development (house and sewerage). He recommended simplification of 5 no. tree-related conditions in the Council's decision to grant permission to 1 no. condition dealing with the protection of retained trees during construction. The applicant will be happy to abide by such a condition, such the planning authority consider a favourable decision on this application.
- The Planning Authority in the current appeal made no objection to the principle of on-site treatment and disposal of foul effluent and there is no intimation that the proposed facility is intrinsically unsuitable in any way.

- The Applicants would accept a condition of planning permission providing that, if access to public sewerage facilities in Killiney Heath were to become available, the connection would be made and the proposed wastewater treatment plant decommissioned. The Applicants would further accept that such condition would require that the connection should facilitate drainage of “Ashton” to the public sewer, and that he or any successor in title of “Ashton” would be facilitated in routing a drain through the proposed house site to make the said connection.
- It is argued that it is not appropriate for the Planning Authority to rely on the previous reason for refusal issued by the Board in making a recommendation on the current application, as the circumstances are crucially different.

## **6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL**

### **6.1 Planning Authority response**

The Planning Authority responded to the Appeal to state that they consider that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

### **6.2 First party response**

No further first party response was submitted.

### **6.3 Observations on grounds of appeal**

An Observation has been submitted by John & Maureen Callaghan of Park House, Killiney Heath. Their submission seeks to highlight the following:

- They reside in the property immediately adjacent to the site of the intended house construction at Ashton.
- Object to the proposed storm-water and foul waste-water arrangements at this location.
- The proposed development is unsuitable to the site and will result in a significant risk to public health.
- Commissioned a report from Dr. Eugene Bolton, Senior Consultant, Trinity green, Environmental Consultants, which sets out the ground for their objection.
- Urge the Board to uphold the Planning Authority’s decision and refuse permission.
- The site report by Trinity Green seeks to highlight the following:
  - Applicant’s Site Characterisation Report shows there is about 400mm of rapid draining soil overlying bedrock.
  - No T value is reported which reflects the shallow nature of the subsoil
  - Validity of P-test questioned as step 2 carried out at same time as step 1. Highlighted that there is growth of shrubs and Briar at the location of

the test so that the rapid percolation may reflect the presence of a network of roots rather than the true soil structure.

- Argues that the sand polishing filter design has not taken into account the need to specify the T-value of the imported soil and that the filter is therefore half the size that is required if designed in accordance with the EPA code.

## 7.0 POLICY CONTEXT

The Dún Laoghaire-Rathdown County Development Plan 2016-2022 refers to the subject site. This Plan was adopted in March 2016, therefore after the appeal was lodged with An Bord Pleanála. The zoning map identifies the site with the residential zoning objective “*to protect and/or improve residential amenity*”. It is also located within the boundary of the Architectural Conservation Area and the dwelling Hillside is identified as a Protected Structure. Policy concerning Protected Structures is contained in section 8.2.11.2 and policy concerning Architectural Conservation Areas is set out in Section 8.2.11.3 of the Development Plan. Both of which are appended to this Report.

## 8.0 ASSESSMENT

I have read all documentation on file. I have reviewed all plans and particulars and have read the appellants’ grounds of appeal. I have read the relevant provisions of the statutory development plan for the area and I have carried out a site inspection. In my opinion, the main issues to be addressed in this appeal are as indicated hereunder:

- Inability to enact current permission
- Current Drainage Proposal
- Appropriate Assessment

The documentation submitted to the Planning Authority and the Board provide an account of the Applicant’s inability to enact their current permission under PL06D.242929 which provides for a foul sewage drainage system via a connection into the Killiney Heath public drains which abut the development site. However, to access those drains the Applicant has outlined that the pipes will have to traverse a private access road which is in the shared ownership of the Applicant and their neighbouring dwelling “Hillside”. The owners of “Hillside” have indicated by means of a legal letter that they are withholding consent from the Applicant to carry out works on this access road which would allow them to implement their permission. Therefore the current proposal before the Board seeks to service the permitted dwelling by means of a waste water treatment plant on site to overcome the restrictions of connecting into the public drainage system. In the event that the Board consider a grant of permission, it is stated in the submission that the Applicant is willing to connect into the public drainage system at a later stage should circumstances change.

I have had regard to the documentation submitted by the Applicant in relation to the current legal impasse regarding carrying out works to the private lane. However, the inability to implement the permission as granted by the Board under PL06D.242929 is a legal matter between the applicant and the residents of Hillside, and is not within the remit of the Board.

Nonetheless, I have had regard to the proposal to service the permitted dwelling by means of revised storm water and foul waste-water disposal arrangements. A report submitted on the Applicant's behalf by Biocycle Ltd outlines that a Biocycle Wastewater Treatment System is proposed on site. The treatment unit is to have a hydraulic loading of 1,200 l/day to service the population equivalent of 8 persons (taken from the proposal to have 3 double bedrooms and 2 single bedrooms). The Report recommends that a treatment system with a capacity of 11.36m<sup>3</sup> be installed to treat the daily volume of effluent from the proposed development. In addition a secondary treatment system is recommended by means of a polishing filter of 20m<sup>2</sup>. As the system is not designed to take surface water run-off from either the development or its surroundings, it is proposed to install surface water collection pipes and gullies around the perimeter of the proposed dwelling. In addition sustainable urban drainage systems are proposed in the form of a soakaway which will be designed in accordance with BRE 365 and has been sized accordingly. Furthermore, the hared paved surfaces around the dwelling will be constructed using permeable paving. The area of paving around the dwelling is estimated to be 225m<sup>2</sup>.

The applicant has submitted a Flood Risk Assessment and Drainage Report as part of the documentation provided to the Planning Authority. I note that the site itself and the immediate surrounding area have no reports of flooding. The nearest recorded flood events are greater than 800m from the site and do not have a bearing on the site itself. I have verified this information on floodmaps.ie and find it to be the case.

I have considered the documentation provided in support of the proposal. I note however, that a site characterisation form is absent from the documentation. The form is critical in the consideration of the proposal as it provides essential information on the rate of percolation and the potential suitability of the site. The onus is on the Applicant to provide such documentation to support their argument that foul sewage can be safely discharged on site. I note that the previous proposal on site which was refused permission under PL06D3242926 contains a Site Characterisation Form, which I have noted. Nonetheless, in the event that the Board is considering a grant of permission, it is recommended that a Site Characterisation Form to accompany the current proposal is sought in advance of a final decision.

An observer to the appeal has submitted an objection to the proposal including a report by Trinity Green, Environmental Consultants. This report was previously submitted as part of the last appeal, PL06D.242929, however, it has been updated in part to take account of the current appeal. A large part of the report cites



objection to the method in which the P-test was carried out and the capacity of the Polishing Filter as inadequate. However, I cannot verify those statements as the Site Characterisation Form was not submitted, as previously stated. I note that it is argued in Trinity Green's report that on account of the shallow bedrock present an assessment of the permeability of the bedrock should be carried out to determine whether the site can absorb the hydraulic load and to ensure that ponding does not result. The Applicant's Envirpro report has responded to this stating that the presence of an existing old septic tank on site which is over 50 years old and its satisfactory functioning on site is clearly evidence of the potential of the site to deal with a much more highly treated effluent. It is also argued that whilst there is a shallow depth to rock, it is not necessarily bedrock as the top of the rock is highly weathered to at least 1m BGL. Site visits by Envirpro after heavy rains did not discover any ponding. Nonetheless, I consider that the Observer has a valid point in referencing Section 6.2.3 of the Code of Practice and in the event that permission is considered, an assessment of the permeability of the bedrock should be required.<sup>1</sup>

I have had due regard to the SUDS measures that the applicant proposes to incorporate into the overall development and consider that they will address issues of surface water runoff associated with the geology and topography of the site.

With respect to the suitability of the site to accommodate an on-site wastewater treatment plant, due to the failure of the Applicant to submit an On-site Characterisation Form to support their proposal, it was not possible to determine its compliance with code of practice.

Having regard to the existence and availability of a public foul sewer system proximate to the appeal site, it is considered that the proposal to service the proposed dwelling by means of waste water treatment plant is undesirable and would be contrary to the proper planning and development of the area. I note that it is Council policy to "*strongly discourage the provision of individual septic tanks and domestic waste water treatment systems and, where applicable, to connect the development to the public sewer mains network, in order to minimise the risk of groundwater pollution*".<sup>2</sup> This policy is considered reasonable.

On the issue of Appropriate Assessment, I have had due regard to the nature and scale of the development proposed and the distance between the site and designated European Sites, I do not consider that significant effects on those European Sites or their conservation objectives are likely to arise from the Scheme, either alone or in combination with other plans or projects.

## 9.0 CONCLUSIONS AND RECOMMENDATION

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<sup>1</sup> Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses (2009) EPA

<sup>2</sup> Dún Laoghaire-Rathdown County Development Plan 2016-2022, Page 124.

Having regard to the availability of a connection to the public sewerage drainage system within close proximity to the site in Killiney Heath and Council policy which encourages a public connection rather than the provision of an onsite private waste water treatment system, it is considered that the current proposal would be contrary to the proper planning and sustainable development of the area.. It is considered that the current impasse regarding works to the private access road is a legal matter and is outside of the remit of An Bord Pleanála. Furthermore, the failure by the Applicant to provide a Site Characterisation Form, though one was provided with the previous appeal documentation and it is likely that the site remains unchanged, is contrary to the EPA's Code of Practice. It is considered that the proposed development should be **REFUSED** for the reasons and considerations hereunder.

### **REASONS AND CONSIDERATIONS**

1. There is a public sewer connection available to the applicant in the neighbouring residential development of Killiney Heath. Consequently, the proposal to provide a wastewater treatment system to service the proposed development is contrary to Council policy, would be prejudicial to public health and would set an undesirable precedent for similar developments in the area. It is therefore considered that the proposed development would be contrary to the proper planning and sustainable development of the area.

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Fiona Tynan  
Senior Planning Inspector  
26/05/2016