



An  
Bord  
Pleanála

## Inspector's Report PL06S.248256.

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<b>Development</b>	House, Garage and Waste water treatment system.
<b>Location</b>	Newcastle Golf Centre, Peamount Lane, Newcastle, Co. Dublin.
<b>Planning Authority</b>	South Dublin County Council.
<b>Planning Authority Reg. Ref.</b>	SD17A/0004.
<b>Applicant(s)</b>	Martin McNulty.
<b>Type of Application</b>	Outline Permission.
<b>Planning Authority Decision</b>	Refuse permission.
<b>Type of Appeal</b>	First Party.
<b>Appellant(s)</b>	Martin McNulty.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	27 <sup>th</sup> June 2017.
<b>Inspector</b>	Ciara Kellett.

## 1.0 Site Location and Description

- 1.1. The appeal site is located immediately north-east of the Peamount Hospital complex and the Peamount reservoir in Newcastle, Co. Dublin off the R120 road. It is c.2.8km north-east of Newcastle village and c.1.8km north of the Baldonnel airport runway.
- 1.2. The site is located at the end of a cul-de-sac, Peamount Lane. Entrance to the Newcastle Golf Centre is from Peamount Lane and the subject site is located within the grounds of Newcastle Golf Centre near the entrance. The same entrance to the Golf Centre already serves three houses – one which has not been completed and all owned by family members. The applicant owns the larger landholding which forms the Newcastle Golf Centre. The site is currently within the pitch and putt course at the Golf Centre but is unused.
- 1.3. Appendix A includes maps and photos.

## 2.0 Proposed Development

- 2.1. Outline Permission is sought for a two storey detached dwelling, c. 200sq.m, a garage and an on-site proprietary waste water treatment on a 0.2Ha site. The site is not delineated as there are no boundaries currently. It is located on the eastern side of the driveway serving the Golf Centre.
- 2.2. The applicant notes that the planning application is being submitted following the completion of the sale of land by the applicant to South Dublin County Council, which included the applicant's family home at nearby Ballybane, Nangor Road.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse permission for five reasons. In summary the reasons are:

1. The site is located in an area zoned 'RU' which seeks to protect rural amenity and provide for development of agriculture. Policy H22 states that dwellings will only be permitted in exceptional circumstances where applicants can establish a genuine need to reside in proximity to their employment, or where

the applicant has close family ties. The applicant sold his existing dwelling c.1km from the site. It is considered that no exceptional circumstances have been established. Furthermore, the proposed development would not be in accordance with the Sustainable Rural Housing guidelines which specifically refer to persons who have lived most of their lives in rural areas and are building their first home. Proposal would materially contravene the Guidelines and zoning for the area.

2. The development would result in the creation of an infill site and would adversely impact on the rural character of the area and would conflict with the requirements of Housing Policy 27 and section 11.3.4 of the Development Plan.
3. Road frontage would be significantly below the required minimum roadside frontage, 51m vs. 60m.
4. Insufficient detail has been submitted regarding the Section 47 Agreements required by condition under planning permissions obtained by the family members.
5. The site is located in the Dublin Metropolitan Area under the Regional Planning Guidelines for the GDA. The settlement strategy supports the delivery of a settlement hierarchy. The metropolitan area has been identified as suffering from sprawl. Further development in the metropolitan area is to be consolidated to achieve a more compact urban form. The development would represent the proliferation of further one-off housing in the metropolitan area which could prejudice the sustainable achievement of the Settlement Strategy.

### **3.2. Planning Authority Reports**

The Planner's Report is the basis for the Planning Authority decision. It includes:

- Site is zoned 'RU' which seeks to protect and improve rural amenity and to provide for the development of agriculture. Residential development is open for consideration when in accordance with Council policy for residential development in rural areas.

- Proposals may only be permitted if they do not conflict with the policies and objectives of the Plan, including housing needs criteria.
- Policy H22 permits housing in exceptional circumstances where the applicant can establish a genuine need to reside in proximity to their employment, or the applicant has close family ties with the rural community.
- Lands and house belonging to applicant have been sold to the Council c. 1 mile from the site. There is no need for the applicant to reside near the Golf centre.
- Three family homes have been built – one has not been completed. That dwelling is up to roof level and has no windows. The permission expired in January 2013. The applicant has demonstrated close family ties to the area, however no exceptional circumstance has been established.
- No information has been provided as to why the applicant chose to dispose of his current family home. The Council is a land developer in this instance and has not made the applicant homeless as stated in the submission accompanying the application. The applicant has lived in the rural area but this is not his first rural dwelling. The applicant's rural housing need was previously met and the applicant sold the property.
- Given that the permission for the dwelling that has not been completed has expired, the applicant should have outlined the plans for that site. It would be preferable for this abandoned dwelling to be finished off rather than a new dwelling in this location.
- The subject site was sterilised for 10 years under the planning permissions for the family members. The applicant has not provided any details of either entry into a Section 47 agreement or the lifting of the agreement. This condition on earlier permissions was an indication of the intention to restrict the number of houses in the area.
- The area of the site is within c.3km from Newcastle village. The area of the site constitutes a rural area under strong urban influence, and under policy H20 it is the policy to restrict the spread of dwellings in RU zones.

- Site is an infill site and would have an adverse impact on the landscape contrary to policy H27.
- The site has road frontage of 51m below the minimum of 60m required.
- Considers the development would materially contravene provisions of the Development Plan and recommends permission is refused.

The decision was in accordance with the Planner's recommendation.

#### 3.2.1. Other Technical Reports

- **Water Services Section:** requests further information.
- **Environmental Health Officer:** No objection subject to conditions.
- **Roads Section:** No objection.
- **Public Realm Department/Heritage Officer:** No report.

#### 3.3. Prescribed Bodies

- **Irish Water:** requests Further Information.

#### 3.4. Third Party Observations

- None on file.

### 4.0 Planning History

There are a number of planning applications associated with the larger landholding. In summary, they are as follows:

- **ABP Ref: PL06S.129869, SDCC Reg. Ref. S02A/0140:** Permission refused by the Board in November 2002 for a change of use from covered driving range building to light industrial/small enterprise units for two reasons: The site is located in an area with zoning objective to protect and improve rural amenity, and the substandard nature of Peamount Lane and its junction with the Lucan to Newcastle Road.

- **SD03A/0899:** Retention permission granted by the Council in May 2004 for the conversion of 8 no. approved golf driving range bays to 4 no. golf centre stores, minor internal alterations, machine mower store to golf tuition suite.

First site on the left (west):

- **Reg. Ref. SD04A/0739:** Outline Permission granted in April 2005 for a two storey four bedroom detached dwelling. Condition no.7 required a section 47 agreement to be entered into, to preserve the remainder of the land outlined on the drawing (save 2 sites) free from any further residential development for 10 years.
- **Reg. Ref. SD05A/0868:** Permission granted in January 2006 following the grant of outline permission to a family member. Condition no.6 included an occupancy condition of 7 years and Condition no.7 required that a Section 47 agreement would be entered into, to preserve the remainder of the land holding free from further residential development save sites for which two other permissions relate (see below). The agreement was to last for 10 years.
- **Reg. Ref SD05A/0868/EP:** Permission extended by two years until January 2013. Following my site visit I note that the development has been built to the point where a roof is now added. It is, however, unfinished with no windows or cladding.

Second site on the left (west):

- **Reg. Ref. SD04A/0738:** Outline permission granted by the Council in April 2005 for a two storey four bedroom detached dwelling. Condition no.7 required a section 47 agreement to be entered into, to preserve the remainder of the land outlined (save 2 sites) free from any further residential development for 10 years.
- **Reg. Ref. SD05A/0865:** Permission granted in January 2006 following the grant of outline permission to a family member. Condition no.4 included an occupancy condition of 7 years, and Condition no.5 required the applicant to enter into a Section 47 agreement to preserve the landholding free from further residential development save sites for which two other permissions relate (see above and below). The agreement was to last for 10 years.

- **Reg. Ref. SD05A/0865/EP:** Application invalid as it was received outside of the time period for lodging an application to extend the time. This development is complete.

First site on the right (east):

- **Reg. Ref. SD04A/0737:** Outline permission granted by the Council in April 2005 for a two storey four bedroom detached dwelling. Condition no.7 required a section 47 agreement to be entered into, to preserve the remainder of the land outlined on the drawing (save 2 sites) free from any further residential development for 10 years.
- **Reg. Ref. SD05A/0866:** Permission granted in January 2006 following the grant of outline permission to a family member. Condition no.4 included an occupancy condition of 7 years, and Condition no.5 required the applicant to enter into a Section 47 agreement to preserve the landholding free from further residential development save sites for which two other permissions relate (see above). The agreement was to last for 10 years. This house is built.

Other Planning Permissions in the area relate to the hospital and other dwellings along the road.

## 5.0 Policy Context

### 5.1. South Dublin County Development Plan 2016 - 2022

Chapter 2 refers to Housing and Chapter 11 refers to Implementation. Schedule 5 refers to Definition of Use Classes and Zoning Matrix Table.

Section 2.5.0 refers to Rural Housing. The Plan states that '*It is the policy of the Council to restrict the spread of dwellings into rural and high amenity areas*'. **Policy H20** states:

*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.*

With respect to Rural Housing in RU zone, **Policy H22** 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.*

**H22 Objective 1** states:

*To consider new or replacement dwellings within areas designated with Zoning Objective "RU" (to protect and improve rural amenity and to provide for the development of agriculture) 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.*

With respect to design **Policy H27** Rural House & Extension Design

*It is policy of the Council to ensure that any new residential development in rural and high amenity areas, including houses and extensions are designed and sited to minimise visual impact on the character and visual setting of the surrounding landscape.*

**H27 Objective 1:**

*Ensure that all new rural housing and extensions within areas designated with Zoning Objective 'RU'.....: (inter alia)*

*Is designed and sited to minimise impact on the landscape including views and prospects of natural beauty or interest or on the amenities of places and features of natural beauty or interest including natural and built heritage features; and.....*

*Would not create or exacerbate ribbon or haphazard forms of development.*

Table 11.1. of Chapter 11 states that the objective of RU zoning is 'To protect and improve rural amenity and to provide for the development of agriculture'. Residential



development is 'Open for Consideration' in accordance with Council policy for residential development in rural areas.

Section 11.3.4 specifically refers to Rural Housing. Section 11.3.4(ii) states that 'A minimum road frontage of 60m should be provided for all new dwelling sites in rural areas and a proliferation of housing along stretches of road in a manner that creates ribbon development should be avoided'.

The site is identified on Map 4 and is zoned RU with an objective for Traveller Accommodation in lands to the west.

## 5.2. Sustainable Rural Housing Guidelines for Planning Authorities

The Guidelines refer to persons considered as constituting those with rural generated housing needs being persons who are an intrinsic part of the rural community, or working full-time or part-time in rural areas. The Guidelines refer to persons who are an intrinsic part of the community 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*'.

Appendix 4 refers to Ribbon Development. It states:

*These guidelines recommend against the creation of ribbon development for a variety of reasons relating to road safety, future demands for the provision of public infrastructure as well as visual impacts. Other forms of development, such as clustered development, well set back from the public road and served by an individual entrance can be used to overcome these problems in facilitating necessary development in rural areas.*

And

*Whether a given proposal will exacerbate such ribbon development or could be considered will depend on: The type of rural area and circumstances of the applicant, The degree to which the proposal might be considered infill development, and The degree to which existing ribbon development would be*

*extended or whether distinct areas of ribbon development would coalesce as a result of the development.*

### 5.3. **Natural Heritage Designations**

The Glenasmole Valley SAC (Site Code 001209) is located c. 10km to the south-east of the site.

## 6.0 **The Appeal**

### 6.1. **Grounds of Appeal**

A first party appeal has been lodged against the decision of the planning authority to refuse permission. It addresses each point of the reason for refusal. In summary, it states:

#### **Reason no.1:**

- Policy and Objective H22 outline the two exceptional circumstances where dwellings will be permitted on a site zoned RU – applicant can establish a genuine need due to their employment or has close family ties. Planning Authority has applied policy H22 on the basis of meeting two criteria namely exceptional circumstances and one of the two scenarios. Notwithstanding that the applicant has demonstrated close family ties to the area, the Council has applied two tests to assess applicant's compliance with policy H22.
- Recent appeal in Red Gap, Rathcoole (PL06S.247577) confirms applicant's view that exceptional circumstances are those set out in H22 objective.
- Applicant's current home has been sold to the Council as part of a more substantial land deal involving c.5 hectares of enterprise and employment zoned land at Nangor Road. Council was insistent that the family home was included in the sale – it is that action that precipitated the subject application.
- With respect to the Sustainable Rural Housing Guidelines, the Planning Authority cite only one example in the first reason for refusal, referring to persons who have lived most of their lives in rural areas and are building their first homes.

**Reason no.2:**

- It is not agreed that the proposed site layout would be contrary to policy H27 or section 11.3.4 of the Development Plan.
- As a general rule, an infill site would be considered to have reduced visual impact irrespective of an urban or rural location.
- The site has been selected to avoid any impact on the layout of the pitch and putt course – any visual impact would be minimal and very localised.
- There are no objectives to protect and preserve public views, so there is no justification for the Council to conclude there would be an adverse impact and there is nothing in policy H27 or section 11.3.4 that this proposal contravenes.

**Reason no.3:**

- Section 11.3.4(ii) requiring 60m road frontage refers to public roads. The proposal is served by a private road which also provides access to the applicant's children's dwellings.
- Previous permissions for the McNulty's at this location confirm that this issue was accepted.
- If required, site frontage can be easily increased from 51m to 60m.

**Reason no.4:**

- All of the permissions for development on the site included a condition that a Section 47 agreement was to be entered into.
- The relevant map is unavailable but a letter indicating the applicant's willingness to enter into an agreement is submitted with the appeal, dated January 2005. This letter is in respect of permission SD04A/0737 and was filed in respect of condition no.7 on all outline planning permissions.
- The subsequent approval permissions repeated the sterilisation condition but the applicant didn't realise that an updated compliance was required.
- It has been over 12 years since the receipt of the agreement and the applicant has honoured his side of it, and the planning conditions have been complied with.

**Reason no.5:**

- There is no mention or consideration of any of the various planning documents listed in the reason for refusal within the Planner's Report.
- There is no justification for this reason for refusal.

**Section 37(2) of the P&D Act.:**

- The appeal states that two of the five reasons for refusal claim the proposal would materially contravene the zoning objective for the area (reason no.1), and materially contravene the development plan (reason no.3).
- Consider that Section 37(2) of the P&D Act applies. The council has erred in applying the 60m standard to a private road and even if it did apply, it can be easily rectified.
- Consider that Section 37(2)(ii) applies in that the Council's interpretation of policy and objective H22 is conflicting, and is not consistent with what the development plan states or consistent with other decisions of the local authority or the Board.

**6.2. Planning Authority Response**

The Planning Authority responded confirming their decision, and consider that the issues raised in the appeal have been covered in the Planner's Report.

**7.0 Assessment**

The main issues are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Principle of Development
- Rural Character
- Section 47 agreement
- Appropriate Assessment

## 7.1. Principle of Development

This application is a request for outline permission only and hence, the key issue to be considered is the principle of development. Reason no.1 refers to development of one-off housing in a rural area. Reason no.5 also refers to the settlement strategy of the Council.

The zoning of the area is 'RU – To protect and improve rural amenity and to provide for development of agriculture'. Housing is a use open for consideration in this zoning, but only in exceptional circumstances.

The Development plan states that housing will be considered where an applicant can establish a genuine need to reside in close proximity to their employment or has close family ties in the area.

The applicant comments that the Planning Authority considered that it is necessary to prove exceptional circumstances AND one of the two reasons referred to above, and were incorrect to do so. The Development Plan does not state that the exceptional circumstances are the two criteria, however, it could be interpreted as such.

Notwithstanding this, I do consider that the applicant has demonstrated that he has close family ties to the area. His three children have dwellings in the immediate environs of the site. While I accept that his employment does not require him to live in proximity, his employment is in the adjacent Golf Centre and has been for a long time. I am satisfied that he does qualify for being considered for a dwelling in this area in accordance with policy H22.

The Planning Authority stated that the applicant did not clarify the situation with the dwelling at the entrance to the Golf Centre which was noted as being built up to roof level with no windows installed. From my site visit I noted that the dwelling is now roofed over but is as yet unfinished and uninhabitable with no windows installed. I agree with the Planning Authority's concern with respect to the absence of an explanation as to why that family home is not being completed instead subject to the necessary permits.

The Planning Authority refers to the Sustainable Rural Housing Guidelines which provides examples of persons to be considered for rural dwellings. One example is

*'people who have lived most of their lives in rural areas and are building their first homes'*. The Planning Authority have cited this example stating that the applicant already had a home and disposed of it, therefore his rural housing needs were already met. Having regard to the fact that the applicant sold his land and dwelling to the Council for enterprise and employment zoned land, and that the applicant states that the Council was insistent that the house was part of the deal, I consider that this is an unusual circumstance and the fact that this is not his first home should not be a reason for refusal, nor would I consider it to materially contravene the Guidelines.

In conclusion, I am satisfied that the applicant has close family ties to the area and therefore qualifies to be considered for a dwelling in this area, subject to all other policies and objectives.

## **7.2. Rural Character**

Reason no.2 refers to policy H27 and section 11.3.4 of the Development Plan, and considers that the development would impact negatively on the rural character of the area. H27 Objective 1 states that new rural houses should not (inter alia) create or exacerbate ribbon or haphazard forms of development.

Policy H20 of the Plan states that it is the policy of the Council to restrict the spread of dwellings into rural RU zoned areas.

The cluster of dwellings will be served by one entrance, which also serves the Golf Centre. I am of the opinion that the addition of another house in this location would negatively impact on the rural character of the area. A fourth house in this location would exacerbate ribbon or haphazard development contrary to H27 Objective 1. When viewed from the entrance to the Golf Centre, only dwellings will be visible, which is contrary to policy H27 which requires that dwellings are designed and sited to minimise visual impact on the character and visual setting of the surrounding landscape.

Reason no.3 refers to Road Frontage and states that the development does not have the minimum road frontage. I agree with the applicant that the road in question is a private road and therefore the 60m does not apply. The applicant states that 60m could be provided if necessary – the site has to be increased to do so. I do not

consider that this is a necessity for the subject dwelling with access from the private road should the Board consider granting permission.

Having regard to the development being contrary to Policy H20, Policy H27 and H27 Objective 1 of the Development Plan, I would recommend that the proposal is refused for this reason.

### **7.3. Section 47 Agreement**

Reason no.4 referred to Section 47 agreements. It would appear that the earlier three planning permissions for the applicant's three children were all subject to a Section 47 agreement. The agreements were for 10 years. There seems to be some difficulty with providing maps with respect to the land that was the subject of the Section 47 agreement. Copies of the letter submitted with the outline permission for the three dwellings are on the outline permission files.

The applicant states that letters confirming compliance with this condition were submitted on foot of the outline permission and it was assumed that this was sufficient for compliance with the conditions relating to the full permission, and hence, why no further letters are on full permission file. I note that there have been no enforcement proceedings relating to non-compliance with the conditions on the full planning permissions. Furthermore, I note that 10 years has elapsed.

I am satisfied that compliance with Section 47 should not be a reason for refusal of permission.

### **7.4. Appropriate Assessment**

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

## **8.0 Recommendation**

I recommend that outline planning permission should be refused for the reasons and considerations as set out below.

## 9.0 Reasons and Considerations

It is the policy of the planning authority as set out in the current Development Plan to restrict the spread of dwellings into rural RU zoned areas, and to ensure that any new residential development in rural areas is designed and sited to minimise visual impact on the character and visual setting of the surrounding landscape. These policies are considered to be reasonable. The proposed development would be in conflict with these policies because, when taken in conjunction with existing development in the vicinity of the site, it would consolidate and contribute to the build-up of ribbon development in an open rural area. This would militate against the preservation of the rural environment and lead to demands for the provision of further public services and community facilities. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

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Ciara Kellett  
Inspectorate

28<sup>th</sup> June 2017