



An
Bord
Pleanála

Inspector's Report ABP 302259-18.

Development	Retention of existing 133sq.m bungalow, well and effluent treatment system.
Location	Pale Farm, Pucks Castle Lane, Ballycorus, Rathmichael, Co. Dublin.
Planning Authority	Dun Laoghaire Rathdown County Council.
Planning Authority Reg. Ref.	D18A/0477.
Applicants	Malcolm and Susan Stuart.
Type of Application	Retention permission.
Planning Authority Decision	Refuse.
Type of Appeal	First Party.
Appellants	Malcolm and Susan Stuart.
Observers	None.
Date of Site Inspection	17 th October 2018.
Inspector	Dáire McDevitt.

1.0 Site Location and Description

- 1.1. The application site is located along a private access road serving the applicants farm, Pale Farm, off Pucks Castle Lane in Ballycorus, Rathmichael a predominantly rural area in County Dublin, c. 1.3km west of the M50 on an outlying hill of the Dublin Mountains. Further north Puck Castle Lane accesses onto the Ballycorus Road (R116) which links the M50 to Kilternan.
- 1.2. The relevant house is a single storey bungalow granted permission in 2004 c. 180m from the entrance into the Farm off Pucks Castle Lane. The house is located on the southern side of the lane, on a site carved out of a slope and elevated above the lane with an area of planting that has yet to mature, separating the house from the lane. Adjacent to the house is a single storey L-shaped structure which at present appears to be used by the applicant's dogs and for storage.
- 1.3. The private lane also serves to access the farm, farm buildings and a two storey farm house granted permission to the applicants in 2010. This house is not occupied at present as works are ongoing to its interior.
- 1.4. The surrounding landscape is characterised by undulating topography. And while the relevant house is contained within Pale Farm and its landscape, there are long views of it from the Ballycorus Road to the north.

2.0 Proposed Development

- 2.1. Retention of the existing c.133sq.m bungalow, well, effluent treatment system and associated site works. The proposed retention would remove the requirement to demolish this dwelling as provided under the development description for Reg, Ref. D10A/0025.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for the following 2 reasons:

1. The subject site is located in an area zoned 'Objective G: to protect and improve high amenity areas' under the County Development Plan 2016-2022. The applicants cannot establish compliance with Policy RES16 of the County Development Plan 2016-2022 in terms of demonstrating a genuine requirement for housing in the area as they have already been granted a house under planning reference D10A/0025. The development would consolidate a pattern of urban sprawl, lead to demands for uneconomic provision of public services and community facilities and would set an undesirable precedent for similar development in the area. To permit the development would contravene materially the requirements for rural housing in 'High Amenity Zoning 'G'' land as outlined under Policy RES 16 of the County Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.
2. To permit the retention of the subject house would contravene materially conditions no. 1 and 12 of planning permission reference number D10A/0025.

3.2. Planning Authority Reports

3.2.1. Planning Report (10th July 2018)

This formed the basis for the Planning Authority's decision. The main issues related to compliance with conditions attached to D10A/0025 and compliance with Policy RES16 of the current County Development Plan.

- It was noted that as the existing house is considered unauthorised as its demolition was required by condition under D10A/0025. It is assessed as if it were a greenfield site and therefore compliance with the Council's rural housing policy is required.
- The applicants do not comply with RES16, reference to an adult son as the occupier of the house is noted.

- A house at this location was granted under D04A/0039 therefore it is not considered appropriate or reasonable to take issue with its visual prominence under this application.
- The retention of the house directly contravenes conditions No. 1, plans and particulars. The demolition of the bungalow was referred to in the development description and 12 of D10A/0025 which referred to re-using and recycling materials from the demolished house. The retention of the house is considered a significant and fundamental breach of the planning permission.

3.2.2. **Other Technical Reports**

Transportation Planning (21st June 2018). No objection.

EHO (25th June 2018). Further Information recommended regarding effluent treatment system and sampling of water supply.

Drainage (18th June 2018). No objection subject to condition.

3.3. **Prescribed Bodies**

An Taisce (21 June 2018).

- To permit the application would contravene conditions No. 1, 3 and 12 of D10A/0025.
- Lack of clarity regarding wastewater treatment.
- The house to be retained was described a 'far from sensitively attuned to its surrounding' in the D10A/0025 application.
- No reference to the second structure on site.
- No justification with regard to occupancy has been provided.
- No supporting documentation for the applicant's son need for a house at this location. There is a lack of evidence for a housing need in the High Amenity Area.

3.4. Third Party Observations

None.

4.0 Planning History

On the landholding:

PA Ref. No. D01A/0805 refers to a 2001 refusal of permission to Peter Brack for a house in lieu of an existing house on the grounds that the proposal 1) failed to meet the criteria regarding dwellings in a High Amenity Zone and 2) provide adequate details regarding water supply and disposal of foul effluent and surface water.

PA. Ref. No. D03A/0993 refers to a 2003 refusal of permission to Peter Brack for a single storey house on the grounds that 1) it contravened the County Development Plan with regard to houses in High Amenity Zones and 2) it contravened the Plan's requirement with respect to replacement houses in rural areas.

Relevant house:

PA Ref. No. D04A/0039 refers to a 2004 grant of permission to Peter Brack for a house. (This replaced an old cottage on the landholding). This refers to the bungalow which is the subject of the current appeal.

The applicants purchased the c.75 acre holding in 2004.

PA Ref. No. D08A/1022 (ABP Ref. No. 06D.231879) refers to a 2009 decision to refuse permission for changes to the form and layout of the house granted under D04A/0039. To change it from a c. 133 sq.m bungalow to a c. 483sq.m house with basement level garage and associated farmyard and outbuilding. Refused on the grounds of excessive size and prominent location.

PA Ref. No. D10A/0025 refers to a 2010 grant of permission for a two storey farmhouse, wastewater treatment system and demolition of habitable house.

Condition 1, 3 and 12 are of relevance:

No. 1 As per plans and particulars.

No. 3 *That prior to the commencement of development, the Applicant shall enter into a legal agreement with the Planning Authority under Section 47 of the Planning and Development Acts, 2000, as amended, to restrict the lands outlined in red on the site location map (Dwg. No. 124.01.01) lodged with the Planning Authority on the 21st January 2010 from further residential development and as agreed by the Applicant, in the Additional Information received on the 14th June, 2010. When approved, the agreement is to be registered. Proof or registration is to be submitted.*

REASON: In the interest of the proper planning and sustainable development of the area.

No. 12 *The existing materials from demolished structures shall be re-used and recycled to the satisfaction of the Planning Authority. With regard to construction and demolition waste materials which cannot be re-used/ recycled within the proposed development, said materials shall be recovered sustainably off-site, insofar as possible.*

REASON: In the interests of sustainable development.

Planning Enforcement Reference ENF 79/18 refers to the non demolition of a house as required under condition no. 1 of D10A/0025. The current application before the Board for retention of a house is on foot of this action.

Sites in the vicinity:

PA Ref. No. D08A/0581 (An Bord Pleanála Ref. No. PL.06D.230343) refers to a 2009 decision to refuse permission to Jack & Phil Donnelly for a house on the grounds that 1) the applicant failed to comply with RES18 and lands zoned 'G' of the County Development Plan 2004-2010 and 2) The proposed development located on a highly exposed hillside would seriously injure the

visual amenities of the area and would impact on the views along Pucks Castle Lane which it is an objective of the development plan to protect, and would breach the specific local objective that no development will take place above the 90 metre contour at Rathmichael, from Old Connaught Golf Course to Pucks Castle Lane.

PA Ref. No. D07A/0728 (An Bord Pleanála Ref. No. PL.06D.224944) refers to a 2008 decision to refuse permission to Dayle Armstrong for a house on the grounds that the site of the proposed single storey dwelling was located in a rural area which was zoned 'G' in the Dun Laoghaire-Rathdown County Council Development Plan 2004 - 2010 where the objective is 'to protect and improve high amenity areas'. The proposed development located on a highly exposed hillside would seriously injure the visual amenities of the area and would impact on the views along Pucks Castle Lane which it is an objective of the plan to protect. The development would, therefore, conflict with the provisions of the said County Development Plan and would be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Dun Laoghaire Rathdown County Development Plan 2016-2022

Land Use Zoning Objective **G** 'to protect and improve high amenity areas'

There is an objective 'To preserve views' in the general direction of the existing house from the area of Puck's Castle Lane north of the application site as per Map 10 of the Plan.

Section 2.1.4 refers to rural housing

Policy **RES 16** relates to the management of one-off housing. It is policy to resist the spread of one-off housing into the rural countryside and to accommodate local growth into identified small villages. One off rural housing may be acceptable where it is shown that it is not urban generated, will not place excessive strain on services and infrastructure, or have a serious

negative impact on the landscape and where there is a genuine need to reside in a rural area due to locationally specific employment or local social needs (subject to compliance with specific zoning objectives). Within areas zoned 'Objective G' dwellings will be permitted where an applicant can demonstrate to the satisfaction of the Planning Authority that:

- There is a genuine requirement for housing in the area because their principle employment is agriculture, hill farming or a local enterprise directly related to the area's amenity potential.
- The proposed development will have no potential negative impacts for the area in such terms as visual prominence or impacts on views and prospects, or the natural or built heritage.

Section 8.2.3.6 refers to criteria for qualifying for a one-off house on lands zoned under objective G and outlines issues that should be taken into consideration with regard to its suitability, design, road frontage, vehicular access, wastewater and water supply.

Policy LHB5 refers to Historic Landscape Character Assessments prepared for 5 areas, these include the Ballycorus-Rathmichael area.

Appendix 7. Landscape Character Area No. 10 Rathmichael

The enclosure encompasses the area between Rathmichael Road and Carrickgollagan. At present the area slope gently westwards up to Carrickgollagan. A number of roads with virtually intact hedgerows criss-cross the area giving a rural ambience, despite the fact that the area is dotted with enclaves of low density units.

Strategy/Sensitivities

- *Maintenance of rural ambience.*
- *Protection of deciduous tree belts.*
- *To have regard to the recommendations and findings of the Historic Landscape Character Assessment for Rathmichael.*
- *The Rathmichael Groundwater Protection Study contains a policy in relation to the Criken catchment and has deemed certain parts of this*

area are not suitable for further development due to the cumulative effect of septic tanks on groundwater.

5.2 Guidelines

5.2.1 Sustainable Rural Housing Guidelines (2005):

The overarching aim of the Guidelines is to ensure that people who are part of rural community should be facilitated by the planning system in all rural areas, including those under strong urban based pressures.

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

5.2.2 National Planning Framework – Project Ireland 2040, Department of Housing, Planning and Local Government (2018)

National Policy Objective 19 refers to the necessity to demonstrate a functional economic or social requirement for housing need in areas under urban influence i.e commute catchment of cities and large towns and centres of employment. This will be subject to siting and design considerations.

In all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitely demonstrate that the proposed development will not have an adverse impact on water quality and requirements set out in EU and national legislation and guidance documents.

5.3 Natural Heritage Designations

The nearest designated sites are:

Ballyman Glen SAC (site code 000713) is c. 2.6km to the south of the site.

Knocksink Wood SAC (site code 000725) is c. 3.6km to the southwest of the site.

Wicklow Mountains SAC (site code 002122) is c. 5.8km west of the site.

Wicklow Mountains SPA (site code 004040) is c. 5.8km west of the site.

6.0 The Appeal

6.1. Grounds of Appeal

The first party appeal seeks to address the Planning Authority's reasons for refusal and can be summarised as follows:

- The subject bungalow was granted permission under PA. Ref. No. D04A/0039 and has, therefore, already been assessed for visual acceptability and compliance with rural housing criteria.
- A Visual Impact Assessment has been carried out and submitted with the appeal. This concluded that there would be no visual impact from the subject dwelling.
- It is not reasonable to seek the demolition of a habitable house in the context of a national crisis in the residential housing supply.
- The applicants have demonstrated in the documentation submitted with the appeal a genuine requirement for housing in the area owing to the direct involvement of their son, Sam Stuart, in the operation of the family farm.

The appeal documentation includes:

- Visual Impact Assessment Report.
- Letter from Teagasc with reference to Sam Stuarts' involvement in the family farm.
- Letter from the applicant, Malcolm Stuart, outlining the background to the application, the history of his involvement in the farm and his son, Sam, involvement in the running of Pale Farm.

6.2. Planning Authority Response

- The applicants' current family home was only granted on the basis that the subject house would be demolished. To now permit the retention of this house would set an extremely undesirable precedent for future similar development in any area, let alone a high amenity area.
- To base the appeal on reference to a national housing crisis given the circumstances behind this particular planning application should not be taken account as a material consideration.
- As set out in detail in the Planning Report prepared by the Planning Authority for the planning application there was no housing need established, in accordance with the requirements of the County Development Plan 2016-2022, for any identified individual. Proposed occupancy of the structure was extremely vague. The Planning Authority is not obliged to seek further information.
- Further information was not sought under D18A/0477 because the application was considered fundamentally unacceptable. It is an applicant who must demonstrate compliance with the rural housing policy and the applicants already have a house as permitted and constructed under D10A/0025. This again does not seem to be understood in the appeal documentation. It is only in this appeal that the name of the proposed occupant, Sam Stuart, has been mentioned and therefore the original planning application documentation was not 'misread' as suggested. In the application there were numerous vague reference to occupancy of the house. No individual was ever named, let alone any supporting documentation for their compliance with the rural housing policy submitted.
- Reference to other planning applications in the wider vicinity is not relevant as they do not relate to the subject site. Each application and site is unique and each application is assessed on its own merits. The application referred to (D05A/0424) is 13 years older than the current application and relates to a replacement house; not retention of a house that was to have been demolished.

- Leaving aside the fact that it is an applicant who must demonstrate a genuine housing need and that is not possible in this case as the applicants were granted a house under D10A/0025 that has been constructed. The suggested occupant under this application, Sam Stuart, does not comply with the requirements of policy RES16 of the County Development Plan 2016-2022. This requires, inter alia, that an applicant has “a genuine requirement for housing in the area because their principal employment is in agriculture..”. Despite numerous references to the involvement of Sam Stuart in the appeal documentation it has not been established that farming is his “principal employment”. Indeed apart from a brief reference in a letter from Teagasc to his involvement, the other documentation is from the applicants themselves. The Planning Authority’s position with regard to one-off housing is “essentially restrictive and precautionary” as per section 8.2.3.6 (Rural Housing) of the Plan. In the absence of suitable, independent details confirming a principal employment in agriculture it is considered that Sam Stuart does not comply with the provisions of RES16.
- The decision to refuse permission for the retention of the development was the appropriate decision.

6.3. Observations

An Taisce (3rd September 2018). This includes the original submission made to the planning authority. Points of note are:

- Sam Stuarts need for a house at this location is based on letters written by his father. There is no documentation included confirming that Sam’s principle employment is in agriculture, hill farming or a local enterprise related to the areas amenity potential as is required under RES 16 of the County Development Plan as applied to High Amenity Zoning ‘G’.
- PA Ref. No. D05A/0424 referred to a replacement dwelling, not an additional dwelling. As was the case with PA Ref. No. D04A/0039, a replacement dwelling for an old cottage.

- The applicants were granted permission for a new farmhouse under PA Ref. No. D10A/0025 on the basis of the applicants own proposal to demolish the house granted under D04A/0039. Again a replacement house application.
- The present application, for retention of the bungalow that was supposed to be demolished under D10A/0025, would result in an additional house on the holding.
- There is no evidence submitted that the applicants son's housing need could not be satisfied by extending the house granted under D10A/0025.
- The Landscape and Visual Impact Assessment submitted does not address all views of the site. Nor does it respond to the analysis of the prominent location of the bungalow submitted under D10A/0025 when referring to the Boards decision under PL.06D.231879 (substantial extension of the bungalow).
- PA. Ref. D01A/0805 (PL.06D.127605) refers to a refusal of outline permission for a house in lieu of an existing house, it was refused inter alia on the ground that the proposed development 'located on a highly exposed hill side would seriously injure the visual amenities of the area...'

7.0 Assessment

- 7.0.1 Permission was granted in 2010 under PA Ref. No. D10A/0025 for a two storey farmhouse c.400m west of the bungalow which is the subject of this appeal. The bungalow in question was granted permission in 2004 as a replacement for a cottage on the holding.
- 7.0.2 The principle of a house at this location was considered acceptable under PA Ref. No. D04A/0039. The current application seeks to retain the bungalow for use by a family member, not the named applicants, who is stated to work on the farm. The main issue, therefore relates to justifying the retention of the house and compliance with the Council's rural housing policy.
- 7.0.3 The grounds of appeal seek to address the Planning Authority's reasons for refusal. The issue of appropriate assessment and environmental impact assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Rural Housing Policy
- Appropriate Assessment.
- Environmental Impact Assessment.

7.1. Rural Housing Policy

- 7.1.1 Policy RES16 of the current County Development Plan sets out the housing criteria for a single house in the rural area on lands zoned under objective 'G.' which refers to High Amenity zones. The applicants, Malcolm and Susan Stuart, purchased the landholding in 2004 with planning permission (D04A/0039) for the bungalow (replacement house) which is the subject of this application. This house was constructed in 2009 and is used as the family home. In 2010, under PA. Ref. No. D10/0025 the applicants were granted permission for a c.392sq.m two storey farmhouse. Condition No. 1 attached to D10A/0025 required that the development be carried out as per plans and particulars lodged with the Planning Authority, this included the demolition of the existing bungalow. The current application was lodged by Malcolm & Susan Stuart who do not comply with RES 16 as their housing need is met by the new farmhouse granted in 2010 which is near completion.
- 7.1.2 The applicants set out in the appeal that they are seeking permission for the retention of the bungalow for use by one of their sons, Sam Stuart, who is now an adult and is involved in the running of Pale Farm. He would reside full time in the house, thus removing the need for him to build a house on the holding. There is no independent documentation submitted to support Sam's principle employment in agriculture or links to Pale Farm as required under RES16.
- 7.1.3 The principle of a house at this location was established by a grant of permission in 2004. And while I acknowledge that the use of an existing house to accommodate the housing requirements of a person who satisfies RES16 is a more sustainable option than the demolition of a habitable house. The fact remains that the applicants in 2010 used the demolition of the house in question as the justification for a grant of permission for a larger house on the holding. Sam Stuart, would be entitled to lodge an application for a house (or the retention of the house which is the subject of this application) on the family landholding which would be assessed on its own merits having regard to the

policies and objectives of the County Development Plan and the relevant national guidelines.

7.1.6 Based on the information on file, the applicants, Malcom and Susan Stuart do not comply with RES16 for a house on lands zoned under land use objective 'G' (High Amenity Zone). As their housing need is satisfied by the house permitted under D10A/0025. The applicant's son, Sam Stuart is not the applicant and no supporting documentation has been submitted to demonstrate his compliance with RES16 and land use zoning objective 'G' of the Development Plan. Therefore permission should be refused.

7.1.7 The second reason for refusal is on the premise that the retention of the house would contravene conditions no, 1 and 12 of PA. Ref. No. D10A/0025. The purpose of the current application is to regularise the non compliance with the above planning conditions. I do not consider it reasonable or warranted to include a reason for refusal on the grounds of non-compliance with Condition No.1 and 12 of PA Ref, No. D10A0025.

7.2 Appropriate Assessment

7.2.1 Having regard to the nature and scale of the development and its location relative to European sites, I consider it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on a European Site.

7.3 Environmental Impact Assessment

7.3.1 Having regard to the nature and scale the development which consists of single house in an unserviced rural location, 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.

8.0 Recommendation

I recommend that permission be refused for the reasons and consideration set out below,

9.0 Reasons and Considerations

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005 and in an area where housing is restricted to persons demonstrating a genuine requirement for housing in accordance with policy RES16 and land use objective ‘G’ (High Amenity Zone) of the Dun Laoghaire Rathdown County Development Plan 2016-2022. Furthermore, the subject site is located in a rural area that is under urban influence, where it is national policy, as set out in National Policy Objective 19 of the National Planning Framework, to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area. Having regard to the proximity of existing settlements to the subject site and having regard to the documentation submitted with the application and appeal, the Board is not satisfied that the applicants have a demonstrable economic or social need to live in this rural area. It is considered, therefore, that the applicants do not come within the scope of the housing need criteria as set out in the Guidelines and in national policy for a house at this location. The proposed development would, therefore, be contrary to the Ministerial Guidelines and to the over-arching national policy, notwithstanding the provisions of the current Dun Laoghaire Rathdown Development Plan, and would, be contrary to the proper planning and sustainable development of the area.

Dáire Mc Devitt

Planning Inspector

13th November 2018