



An  
Bord  
Pleanála

## Inspector's Report ABP.302655-18

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<b>Development</b>	Permission for the construction of a detached dwelling.
<b>Location</b>	The Wood, Ballyedmonduff Road, Sandyford, Dublin 18.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D18A/0689
<b>Applicant(s)</b>	Lisa Doyle & Oisín Blanchfield
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	As above
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	29 <sup>th</sup> November 2019
<b>Inspector</b>	Kenneth Moloney

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## **1.0 Site Location and Description**

- 1.1. The subject site is located off Ballyedmonduff Road which is situated approximately 0.5 km south of Stepaside village (as the crow flies) in south county Dublin.
- 1.2. The character of the local area is rural and there are a number of established one-off houses with access onto Ballyedmonduff Road.
- 1.3. A notable landscape feature locally is the topography. The topography falls steadily in a west to east direction. The falling topography ensures that there are views extending towards Dublin Bay from Ballyedmonduff Road.
- 1.4. The appeal site is accessed from an established shared access onto Ballyedmonduff Road which currently provides access to a number of houses. The actual appeal site is located directly behind one of these houses.
- 1.5. The size of the appeal site is approximately 0.3035 ha (0.75 acres) and shape of the appeal site is irregular.
- 1.6. The appeal site is currently a wooded area and the ground levels are significantly below the aforementioned established house.
- 1.7. There is an established house located further east of the appeal site and this house takes its access off the Burrow Road, which is public road that runs parallel to Ballyedmonduff Road.

## **2.0 Proposed Development**

- 2.1. The proposed development is for the construction of a detached house, provision of new driveway and a wastewater treatment system.
- 2.2. The proposed house is single storey and two-storey in height and the total floor area of the proposed house is 228 sq. metres.
- 2.3. The floor plan of the proposed house provides for 4 no. bedrooms at ground floor level and living space at first floor level.
- 2.4. The proposed development also provides for a first floor balcony which is east facing and cantilevers over the ground level.

### 3.0 Planning Authority Decision

3.1. Dun Laoghaire-Rathdown County Council decided to **refuse** planning permission for 2 no. reasons;

1. The proposed development materially contravenes Objective B of the Dun Laoghaire Rathdown County Development Plan, 2016 – 2022, which seeks to protect and improve rural amenity and to provide for the development of agriculture. National and local policy seeks to restrict housing in un serviced rural areas to applicants who have demonstrated a genuine need to live in such areas. The applicants have not demonstrated a rural housing need in accordance with the requirements of 'Policy RES16 Management of One-off Housing' of the County Development Plan, 2016 – 2022. The proposed development would therefore consolidate a pattern of urban sprawl and lead to demands for the uneconomic provision of public services in an un serviced rural area and would, therefore, be contrary to the proper planning and sustainable development of the area.
  
2. The proposed development would lead to ribbon development contrary to 'Section 8.2.3.6 (ii) Design' and to the provisions of the Sustainable Rural Housing Guidelines, 2005, as it would interfere with the character of the rural landscape which it is necessary to preserve the landscape in the vicinity of the subject site and the wider rural area contrary to the proper planning and sustainable development of the area.

### 3.2. Planning Authority Reports

3.2.1. The main issues raised in the planner's report are as follows;

### Area Planner

- The applicant, Lisa Doyle, has stronger links to Dublin metropolitan area than the local rural area.
- The proposal will have impacts on landscape.
- The proposed development is contrary to ribbon development guidance.

### 3.3. **Third Party Observations**

There are no third-party submissions.

### 3.4. **Internal Reports**

- Environment Health Officer; - Additional information sought for (a) site layout for waste water treatment plant, (b) cross section drawing of the proposed waste water treatment system, (c) a plan indicating the proposed waste water treatment system in relation to neighbouring dwellings.
- Drainage; - No objection subject to conditions.
- Transportation; - No objection to the proposed development.
- Parks Section – Additional information sought for (a) tree survey plan & schedule, (b) tree constraints plan, (c) Arboriculture Impact Assessment, (d) Tree Protection Plan, (e) arboricultural impact assessment.

### 3.5. **Submissions**

- There was a submission from Irish Water who have no objections to the proposed development. There is also a submission from the HSE who requested additional information.

## 4.0 Planning History

- None

## 5.0 Policy Context

### 5.1. Development Plan

5.1.1. Dun Laoighaire – Rathdown County Development Plan, 2016 – 2022, is the operational Development Plan. The following development plan provisions are relevant;

- The appeal site is zoned Objective B. The land-use zoning objective states '*to and improve rural amenity and to provide for the development of agriculture*'.
- Policy RES 16 sets out the policy for the 'management of one-off housing'.
- Section 8.2.3.6 sets out the criteria for rural housing applicants on site's zoned 'Objective B'.

## 6.0 National Guidelines

### 6.1. Sustainable Rural Housing Guidelines

The subject site is located within an 'Area under Strong Urban Influence' as identified in Map 1: Indicative Outline of the NSS rural areas types in the DOEHLG Sustainable Rural Housing Guidelines for Planning Authorities, 2005. The Guidelines note that in these areas the objective should be on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

## 7.0 The Appeal

7.1. The following is the summary of a first-party appeal;

- Supporting documentation demonstrates the primary applicant's (Lisa Doyle) local need connections.
- The County Development Plan provision for granny flats does not apply to the applicant as granny flats provide for short term solutions.
- There is an established access to the site.
- No trees will be removed from the site.
- The layout of the proposed house ensures no interference with existing trees.

### Refusal Reason no. 1

- Documentary evidence as part of the applicant's local needs was submitted as part the submitted application to the Local Authority.
- The applicant has lived in the local area all her life. The applicant's family home adjoins the northwest of the subject site.
- The secondary applicant is a local architect working on a number of local projects.
- The primary application is fourth generation of a local family.
- The applicant's father has been diagnosed with an illness that requires treatment and there is a need for the applicant to live locally to assist with the care of her parents.
- The applicant's family have a history of stone cutting and they have also owned a quarry.
- The applicant attends a dentist in Sandyford as there is no dentist in Stepside.
- The applicant's doctor has recently moved.

- The proposed development is consistent with Section 3.2.3 of the Rural Housing Guidelines, 2005.
- The applicant attended primary school 4.5km (in Kilternan) away from the site for convenience reasons. The applicant's cousins also attended that school and it made school drops /collections easier.
- It is submitted as per EU court case in relation to the Flemish case a requirement for family connections to a local area for local need criteria is considered a discriminatory planning practice and is contrary to EU law Article 43 of the Treaty.
- This EU article states that sufficient connection is incompatible with EU law.
- It is contended that the local residency conditions contained in the Dun Laoighaire-Rathdown County Development Plan discriminate against those who might contribute to rural development.
- Section 37(2) (b) (iii) enables permission having regard to Sustainable Rural Housing Guidelines, 2005. Section 37 (2) (ii) applies where the development plan is misinterpreted.

#### Refusal Reason no. 2

- The appeal site is nestled in the landscape.
- The proposed development will not be visible from Ballyedmonduff Road.
- The existing contours to the site allow for integration of the proposed development to the slope.
- The proposed ground is placed strategically on site to ensure no interference with trees.
- The proposed first floor is elevated off ground level which is part of the concept to minimise physical impact.
- The proposed glazing and elevation orientation will ensure no overlooking.
- The proposed materials include render and zinc cladding and ensure high quality finish.



- The applicants are satisfied to accept a condition that would require any design modifications.
- There is established natural screening which will be retained.
- It is argued that the appeal site is essentially peri-urban as the site boundary is located 500m from the town boundary of Stepside.
- It is submitted that other developments (491 apartments and 50 houses) are located on the edge of Stepside. Further proving that the appeal site is suitable for urban development.
- The subject site is zoned 'objective B' as opposed to 'objective G'.
- The site should be classified as peri-urban.
- It is submitted that local linear development goes back centuries.
- The applicants are seeking to meet housing need as a landowner.
- There is an established vehicular entrance and the proposed development will utilise this entrance.
- The proposed development is not ribbon development.
- The proposal will have no impact on the landscape.
- There are a number of precedents where planning permission was granted for development further up the ridge line than the applicant's site and on sites more prominent than the proposed development.
- It is submitted that the applicant's use public transport / cycling rather than car use.
- In relation to transportation the local area is served by Dublin Bus 44B.
- The need for Dublin Bus in the area demonstrates that the local area is peri-urban.
- The speed limit on the Ballyedmonduff Road is 50kph and this speed limit is typical of an urban road rather than 80kph.
- There are also speed ramps on Ballyedmonduff Road

## 8.0 Response

8.1. The Local Authority submitted a response stating that they had no further comments.

## 9.0 Assessment

- Principle of Development
- Ribbon Development
- Visual / Landscape Impact
- Vehicular Access
- Wastewater Treatment
- EIAR
- Appropriate Assessment

Firstly, however the Board will note that, the Planning Authority's reason for refusal no. 1 stated that the proposal would "materially contravene" the objectives of the Development Plan. Although the Board is constrained by Section 37(2) of the Planning and Development Act, 2000 (as amended), the proposed development is not, in my view, a material contravention of the Dun Laoghaire-Rathdown County Development Plan, 2016 – 2022, and the approval of the proposal, should the Board be so minded, is not of a significance which undermines the provisions or relevant objectives of the County Development Plan.

### 9.1. Principle of Development

9.1.1. A key consideration in this appeal relates to the applicant's rural housing need in this area and as such whether this housing need complies with the provisions of the Dun Laoghaire Rathdown County Development Plan, 2016 – 2022, and the Sustainable Rural Housing Guidelines, 2005.

9.1.2. The appeal site is zoned Objective B and as such Section 8.2.3.6 of the County Development Plan sets out the relevant criteria for proposals for rural housing applications located within lands zoned objective B. The applicant has submitted a comprehensive profile, including supporting documentation, of her background and connections to the local area.

9.1.3. Section 8.2.3.6 of the County Development Plan states that dwellings will only be permitted on suitable sites where;

*a. Applicants can establish to the satisfaction of the Planning Authority a genuine need to reside in proximity to their employment (such employment being related to to the rural community),*

9.1.4. I note from the information submitted that the applicant held a number of part-time jobs in the local area, including hotel service work, shop assistant and sales. However none of this employment would require the applicant to live on the appeal site or in this local rural area.

*b. Applicants can establish to the satisfaction of the Planning Authority a genuine need for an additional dwelling in the rural area and who are native to the area due to having spent substantial periods of their lives living in the area as members of the rural community and have close family ties with the rural community (in accordance with Section 3.2.3 'Rural Generated Housing' of the 'Sustainable Rural Housing Guidelines for Planning Authorities' 2005).*

9.1.5. The question that the Board must satisfy itself is whether the applicant is an intrinsic part of the local community. Section 3.2.3 'Rural Generated Housing' of the Sustainable Rural Housing Guidelines for Planning Authorities, 2005, effectively defines a rural person. Persons who are an intrinsic part of the rural community are defined in the guidelines as '*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. Examples in this regard might include sons and daughters of families living in rural areas who have grown up in rural areas and are perhaps seeking to build their first home near their family place of residence’.*

9.1.6. The applicant has outlined in her application her connections to the local area and I accept that the applicant is not working in rural based employment that requires her to live in this rural area. However, in my view, the applicant has successfully demonstrated that she is a local rural person.

9.1.7. In my view the applicant has demonstrated that she is the daughter of a family living in this rural area and it is also evident that the applicant has grown up in this rural area. The applicant’s parents still live in the family home adjoining the appeal site. Therefore, I would consider having regard to Section 8.2.3.6 of the County Development Plan and Section 3.2.3 of the Rural Housing Guidelines, that the applicant has adequately demonstrated that she would meet the criteria for a rural housing need in this rural location.

## 9.2. **Ribbon Development**

9.2.1. The Local Authority refusal reason refers to ribbon development and concludes that the proposed development would be contrary to Section 8.2.3.6 of the County Development Plan. The Rural Housing Guidelines set out guidance in relation to ribbon development. I would note from the guidelines that ribbon development is referred to as that which is *‘located on the edges of cities and towns and will exhibit characteristics such as high density of almost continuous road frontage type development, where 5 or more houses exist on any side of a given 250 metres of road frontage’.*

- 9.2.2. The Local Authority refusal reason also cites that the proposed development would interfere with the character of the rural landscape and I will examine this further below under Section 9.3.
- 9.2.3. The proposed development, in my view, is not ribbon development in accordance with the definition in the guidelines as it would not result in a continuous line of houses with road frontage.
- 9.2.4. Therefore, I would consider that the proposed development would not result in ribbon development, as outlined in the Sustainable Rural Housing Guidelines, 2005, and would not therefore be contrary to the provisions of the rural housing guidelines.

### 9.3. **Visual / Landscape Impact**

- 9.3.1. I would note from the County Development Plan zoning map that there is an objective to preserve views from Ballyedmonduff Road towards the east. I noted from my site inspection that parts of Ballyedmonduff Road, having regard to the local topography, provides for views towards Dublin Bay which is an attractive feature of the local area and as such it is a statutory objective within the Development Plan to protect these views.
- 9.3.2. Ballyedmonduff Road is elevated relative to the appeal site. The local contours ensure that the appeal site falls relatively sharply from the public road. The local gradient ensure that the appeal site is effectively sunken relative to the public road and as such not visible from the public road. The ridge height of the proposed house is approximately 12.5 metres below the road level of Ballyedmonduff Road.
- 9.3.3. Furthermore the proposed development is set back from the public road and located to the rear of an established house.

- 9.3.4. The appeal site is essentially a wooded area with mature trees and these trees would provide screening for the proposed development. Overall, I would consider, based on the above that the proposed development would have no adverse impacts on County Development Plan objective to preserve views from Ballyedmonduff Road.
- 9.3.5. I note the report from the Parks Department, dated 13<sup>th</sup> August 2018, and I would recommend that a landscape plan is a condition of permission, should the Board favour granting permission.

#### 9.4. **Vehicular Access**

- 9.4.1. There is an existing vehicular entrance that serves a number of established houses. This entrance is onto Ballyedmonduff Road and the sightline provision in both directions is generally good.
- 9.4.2. It is intended that the proposed house will utilise this established vehicular entrance.
- 9.4.3. Overall, I would consider, given the class of road, that the proposed sightline provision would be acceptable and would not give rise to a traffic hazard. I would consider that the proposed vehicular entrance is acceptable in terms of public and traffic safety.

#### 9.5. **Wastewater Treatment**

- 9.5.1. The result of the T-test, in accordance with the submitted site assessment, is 10.93. The E.P.A. publication, Code of Practice, Wastewater Treatment and Disposal Systems Serving Single Houses, 2009, advises that a T value between 3 and 50 that the site is suitable for development of a septic tank or a secondary treatment system. I would consider that the waste water treatment proposals are acceptable.

9.5.2. I note that a submission from the Environmental Health Office and Health Service Executive request that additional information is sought in relation to the proposed waste water treatment system. I would recommend to the Board, should they favour granting permission, that a condition is attached to a grant of permission requiring the applicant to agree to full details of the proposed wastewater treatment plant prior to the commencement of development.

#### 9.6. **EIA Screening**

9.6.1. Based on the information on the file, which I consider adequate to issue a screening determination, it is reasonable to conclude that there is no real likelihood of significant effects on the environment arising from the proposed development and an environmental impact assessment is not required.

#### 9.7. **Appropriate Assessment**

9.7.1. Having regard to the nature and scale of the development proposed, to the nature of the receiving environment, distance of the appeal site from a natura 2000 site and the likely effluents arising from the proposed development I recommend that no appropriate assessment issues arise.

### 10.0 **Recommendation**

10.1. I have read the submissions on the file, visited the site, had due regard to the County Development Plan, and all other matters arising. I recommend that planning permission be granted for the reasons set out below.

### 11.0 **Reasons and Considerations**

Having regard to the location of the site, the nature of the proposal, the rural housing policies of the Dun Laoghaire Rathdown County Development Plan, 2016 – 2022, and the Sustainable Rural Housing Guidelines for Planning Authorities, 2005, it is considered that, subject to compliance with conditions set out below, the proposed development would not be prejudicial to the amenities of the area and would be

acceptable in terms of traffic safety. The proposal would therefore be in accordance with the proper planning and sustainable development of the area.

## 12.0 Conditions

1. The development shall be carried out in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter, unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. The applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 to this effect.
  - (a) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.

This condition shall not affect the sale of the dwelling by a mortgagee in possession or by any person deriving title from such a sale.



**Reason:** To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted to meeting essential local need in the interest of the proper planning and sustainable development of the area.

3. The entire premises shall be used as a single dwelling unit only.

**Reason:** To prevent unauthorised development.

4. Prior to the commencement of development, details of the materials, colours and textures of all the external finishes shall be submitted to the planning authority for agreement.

**Reason:** In the interest of orderly development and the visual amenities of the area.

5. The proposed access from the existing entrance to the site shall be designed and constructed in accordance with the requirements of the planning authority. Details shall be agreed with the planning authority prior to the commencement of development.

**Reason:** In the interests of traffic safety.

6. All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site.

**Reason:** In the interest of orderly development and the visual amenities of the area.

7. Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works and services. Full details shall be submitted to the Planning Authority for written agreement prior to the commencement of development.

**Reason:** In the interest of public health and to ensure a proper standard of development.

8. Surface water from the site shall not be permitted to drain onto any public roads.

**Reason:** In the interest of traffic safety.

9. That all necessary measures be taken by the contractor to prevent the spillage or deposit of clay, rubble or other debris on adjoining roads during the works.

**Reason:** To protect the amenities of the area.

10. The site shall be landscaped in accordance with a scheme of landscaping, details of which shall be submitted to the planning authority for agreement before development commences. The scheme shall include a timescale for its implementation.

**Reason:** In the interest of visual amenity.

11. The construction of the development shall be managed in accordance with a Construction Management Plan which shall be submitted to, and agreed in writing with the planning authority prior to the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

**Reason:** In the interest of amenities and public safety.

12. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000. The contribution shall be paid prior to the commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to the Board to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000 that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

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Kenneth Moloney  
Planning Inspector  
21<sup>st</sup> December 2018