



An  
Bord  
Pleanála

## Inspector's Report ABP 303957-19.

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<b>Development</b>	Two-storey house and on-site effluent treatment system.
<b>Location</b>	The Glen, Woodside, Sandyford, Co. Dublin.
<b>Planning Authority</b>	Dún Laoghaire Rathdown Co. Council.
<b>Planning Authority Reg. Ref.</b>	D18A/1227
<b>Applicant</b>	Aodhan Roe
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission
<b>Type of Appeal</b>	First Party
<b>Appellant</b>	Aodhan Roe
<b>Observers</b>	None
<b>Date of Site Inspection</b>	17/5/19
<b>Inspector</b>	Siobhan Carroll

# Contents

1.0 Site Location and Description .....	3
2.0 Proposed Development .....	3
3.0 Planning Authority Decision .....	3
3.1. Decision .....	3
3.2. Planning Authority Reports .....	4
3.3. Prescribed Bodies .....	5
3.4. Third Party Observations .....	5
4.0 Planning History.....	5
5.0 Policy Context.....	6
5.1. Dún Laoghaire-Rathdown County Development Plan 2016-2022.....	6
5.2. Sustainable Rural Housing Guidelines for Planning Authorities.....	7
5.3. Code of Practice: Wastewater Treatment Systems for Single Houses 2009.	8
5.4. Natural Heritage Designations .....	8
5.5. EIA Screening .....	8
6.0 The Appeal .....	8
6.1. Grounds of Appeal .....	8
6.2. Planning Authority Response .....	12
7.0 Assessment.....	12
7.5. Other Issues.....	18
8.0 Recommendation.....	19
9.0 Reasons and Considerations.....	19

## 1.0 Site Location and Description

- 1.1. The appeal with a stated area of 0.3 ha is located at Barnacullia within the Dublin Mountains. It is situated 1.5km to the north of the summit of Three Rock Mountain. The site lies at the 230m contour it is elevated with panoramic views of Dublin city and the surrounding landscape.
- 1.2. 'The Glen' a two-storey L-shaped dwelling is located 40m to the west of the site. The property is served by a number of sheds/outbuildings which a yard to the east of the dwelling. The site is accessed via a private road off Woodside Road to the east.

## 2.0 Proposed Development

- 2.1. Permission is sought for the construction of a two-storey dwelling with proprietary sewerage treatment system, surface water soakaway, landscaping, ancillary site works and new vehicular entrance with gates.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission was refused for the following 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 unserviced rural areas to applicants who have demonstrated a genuine need to live in such areas only. 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 and Section 8.2.3.6 Rural Housing. The proposed development would therefore contribute to urban sprawl and lead to demands for the uneconomic provision of public services in an unserviced rural area, as well as setting a precedent for similar developments and would, therefore, be contrary to the proper planning and sustainable development of the area.

2. By reasons of its design and prominent position, as well as its location in a transitional zonal area, the proposed development would interfere with the character of the landscape which it is necessary to preserve and is contrary to related County Development Plan provisions Section 8.2.3.6 Rural Housing (ii) Design, Policy LHB2 Preservation of Landscape Character Areas and Section 8.3.2 Transitional Zoning Areas of the County Development Plan and by precedent could lead to further interference with the character of the landscape in the vicinity of the subject site.
3. The proposals would materially contravene condition 4 attached to an existing permission D00A/0541 that relates to the subject lands.

Note: The applicant's attention is drawn to the report of the Environmental Health Officer in relation to the proposals for a proprietary waste-water treatment system.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

- The Planning Officer considered that the applicant did not demonstrate a genuine need for an additional dwelling to reside in the local area for employment reasons. PA Reg. Ref. D00A/0541 refers to the subject site. A condition of the permission required that the applicant enter into an agreement sterilizing the landholding from future residential development. The proposal would materially contravene condition no. 4 of D00A/0541. The proposed siting of the house would render it visible from the surrounding area including Blackglan Road and Woodside Road. It is considered that the proposal would erode the rural character of this upland rural area. Permission was recommended for refusal on that basis.

### **3.2.2. Other Technical Reports**

3.2.3. Transportation Planning – no objection subject to conditions.

3.2.4. Surface Water Drainage Report – no objection subject to conditions.

3.2.5. E.H.O – Further information required in relation to the proposed wastewater treatment system

### 3.3. Prescribed Bodies

3.3.1. There are no reports from any prescribed bodies on the planning file.

### 3.4. Third Party Observations

3.4.1. The Planning Authority did not receive any submissions/observations in relation to the application.

## 4.0 Planning History

**PA Reg. Ref. D17A/0811** – Permission was refused for a change in the terms of condition 4 of planning permission Reg. Ref. D00A/0541 removing the requirement that the landholding be sterilised from further residential development.

1. Notwithstanding the legal standing of the permission it is proposed to amend and to the provisions of the Sustainable Rural Housing: Guidelines for Planning Authorities 2005 and Development Management Guidelines: Guidelines for Planning Authorities 2007; it is considered that the change in the terms of condition 4 of planning permission Reg. Ref D00A/00541, removing the requirement that the landholding be sterilised from further residential development, would materially contravene the policy objectives LHB2: Preservation of Landscape Character Areas and Policy RES16: Management of One-off Housing of the Dun Laoghaire Rathdown County Development Plan 2016 – 2022 and is therefore contrary to the proper planning and sustainable development of the area.

**PA Reg. Ref. D00A/0541** – Permission was granted for revisions to permitted residential development Reg. Ref. D95A/0407. Comprising a revised dormer style house and associated site works, provision of a well and septic tank as previously approved at The Glen, Sandyford, Dublin 18.

Condition no. 4

This permission shall have no effect unless and until the applicant has entered into an agreement with the County Council under section 38 of the Local Government

(Planning and Development) Act, 1963, (as amended) sterilizing the remainder of the land (23.5 acres), of which the site forms part, outlined in red on the site location map lodged with the Planning Authority on 6 June 2000, from further residential development and as agreed in the letter dated 15th August 2000.

Reason: In the interests of zoning objective for the site and in the interests of the proper planning and development of the area.

## **5.0 Policy Context**

### **5.1. Dún Laoghaire-Rathdown County Development Plan 2016-2022**

- 5.1.1. Land Use Zoning: The proposed development site is located in an area zoned as 'B' with the stated land use zoning objective 'To protect and improve rural amenity and to provide for the development of agriculture'.
- 5.1.2. Section 2.1.4 – refers to Rural Housing
- 5.1.3. The policies of the 'Sustainable Rural Housing Guidelines for Planning Authorities' (2005) are fully recognised and embodied within the Council's own policies and approach to one-off houses in its rural areas. (Refer also to Section 8.2).
- 5.1.4. Urban-generated one-off housing which is not directly linked to the rural area can create unsustainable travel patterns, over-dependence on the private car, negative impact on the landscape, increased urban footprint and pressure on the environment and infrastructure. All of these elements can increase carbon footprint.
- 5.1.5. In order to protect the rural character of the countryside and foster sustainable development it is necessary to restrict the growth of what is generally described as urban-generated 'one-off' housing and only facilitate genuine and bona fide cases for new residential development within the County's rural areas. Development proposals will be evaluated in accordance with the following criteria:
- 5.1.6. Rural Amenity Zoning 'B'
- 5.1.7. Within areas designated with zoning Objective 'B' ("to protect and improve rural amenity") dwellings will only be permitted on suitable sites where:

- 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 the rural community), or
- 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)).

#### 5.1.8. **Policy RES16: Management of One-off Housing**

5.1.9. It is Council policy to restrict the spread of one-off housing into the rural countryside and to accommodate local growth into identified small villages subject to the availability of necessary services. It is recognised that much of the demand for one-off housing is urban-generated and this can result in an unsustainable pattern of development, placing excessive strain on the environment, services and infrastructure. However, it is recognised that one-off housing may be acceptable where it is clearly 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 local need to reside in a rural area due to locationally-specific employment or local social needs (subject to compliance with the specific zoning objectives).

5.1.10. Section 8.2.3.6 – refers to Rural Housing

5.1.11. Section 8.3.2 – refers Transitional Zonal Areas

5.1.12. Appendix 11 – Rural Design Guide

#### 5.2. **Sustainable Rural Housing Guidelines for Planning Authorities**

5.2.1. The guidelines require a distinction to be made between 'Urban Generated' and 'Rural Generated' housing need. A number of rural area typologies are identified including rural areas under strong urban influence which are defined as those with proximity to the immediate environs or close commuting catchment of large cities and towns. Examples are given of the types of circumstances for which 'Rural

Generated Housing Need' might apply. These include 'persons who are an intrinsic part of the rural community' and 'persons working full time or part time in rural areas'.

### **5.3. Code of Practice: Wastewater Treatment Systems for Single Houses 2009**

5.3.1. Sets out guidance on the design, operation and maintenance of on-site wastewater treatment systems for single houses.

### **5.4. Natural Heritage Designations**

5.4.1. The nearest Natura 2000 sites are;

- Wicklow Mountains SAC is located 3.9 km to the south-west of the site.
- Wicklow Mountains SPA is located 4 km to the south-west of the site.
- Knocksink Wood SAC is located 5.6km to the south.
- South Dublin Bay and River Tolka Estuary SPA is located 6.8km to the north-east.
- South Dublin Bay SAC is located 6.8km to the north-east.

### **5.5. EIA Screening**

5.5.1. Having regard to the nature and scale of the proposed development comprising the construction of a new detached house and new wastewater treatment system there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environment impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

A first party was submitted by IMG Planning on behalf of the applicant Aodhan Roe. The main issues raised can be summarised as follows;



- The site is zoned Objective 'B' with the stated land objective 'To protect and improve rural amenity and to provide for the development of agriculture'. The case for the need of the applicant to live in the area is based on close family ties with the community and not on the basis of employment.
- The Planning Authority considered that the information in relation to the status of applicant was not sufficient to justify a genuine need for an additional house in the area.
- As detailed in the documents submitted with the application the applicant Aodhan Roe was born in the area, was baptised and confirmed in the parish and he attended the local national and secondary school. He has been a member of the local GAA club for many years and he has played for both juvenile and adult teams. It is stated that five generations of the applicant's family have lived on Woodside Road and have worked as stone masons in the local quarries.
- The applicant has worked in the stone business for many years. The applicant has support from neighbours for the proposed development.
- The applicant's parents intend to retire and the applicant intends to continue the family business when they retire. At present the applicant is not engaged full-time in a rural based activity. He is qualified in stone cutting and stone carving having a FETAC certificate.
- It is submitted that the applicant has established a genuine need for an additional dwelling in the rural area, that he is native to the area and has close family ties with the rural community in compliance with Policy RES16 and Section 8.2.36 of the Development Plan.
- It is also submitted that the applicant will be engaged full-time in a rural based activity that would require residing in the area in compliance with Policy RES16 and Section 8.2.36 of the Development Plan.
- The location and design of the proposed dwelling reflected the advice from the Council's response to the 2015 pre-application consultation. It is submitted that the Design Intent Report submitted with the application fully

addresses the manner in which the design meets the criteria of the County Development Plan and the Rural Design Guide.

- The report of the Planning Officer refers to the proposed dwelling as 'significantly larger in scale at 200sq m' than a vernacular cottage. A vernacular cottage was not proposed. The dwelling has a footprint of 150sq m with 50sq m in attic accommodation.
- It is noted that the use of roof space for bedroom where two-storey dwellings are sought can reduce bulk and scale and provide dormers successfully integrate into the roof. The proposed design provides less bulk by not providing dormers. The report of the Planning Officer states that the roof pitch presents a 'heavy and overly tall roof profile'. The proposed roof pitch is only marginally steeper than the pitch recommended to allow attic accommodation without dormers. The report of the Planning Officer raises concern at the overly long frontage at around 27m. This is considered subjective and is not accepted.
- The purpose of the design is to extend the existing cluster of buildings as a Clachan would.
- It is submitted that it was the Council's recommendation in 2015 that the subject site be used rather than other sites further down the hill which were within zone B and not in a transitional zone. The appeal refers to the photomontages provided in the Design Intent Report which indicate the minimal impact the dwelling would have particularly with the tree planning proposed.
- It is submitted that the impact of the proposed development as designed will not interfere with the character of the area.
- Should the Board be satisfied that the applicant satisfies the criteria for a dwelling on the site, but consider that the proposed design is not appropriate revised drawings have been submitted with the appeal. As indicated on drawing P-P-0-7 and P-P-0-8 an L-shaped design is proposed. This reduces the frontage from 27.3m to 19m. The building form is broken down into two forms with the roof height reduce by 2m in one section and 1.3m in the other section. While the alternative L-shape design offers an acceptable

compromise it is maintained that the form and design of the proposed dwelling is a stronger design.

- In relation to the issue of material contravention of planning register reference D00A/0541, condition no. 4 requires that the applicant to enter into an agreement under Section 38 of the Local Government (Planning & Development) Act 1963 (now Section 47 of the Planning & Development Act 2000, as amended) to sterilize the remainder of the landholding on which the house is located from further residential development.
- In a letter dated 15<sup>th</sup> of August 2000 the applicant's architect confirmed their willingness to enter into a sterilisation agreement with the Council. However, none of the parties engaged by the applicants at the time proceeded to effect the agreement and to date there is no agreement in place. The landholding is not sterilised, however the existing house has not been effected.
- The applicants sought to address the situation by applying for permission in September 2017 to change the terms of condition 4 to remove the requirement that the landholding be sterilised from further residential development under PA Reg. Ref. D17A/0811. However, the Planning Authority refused permission.
- It is submitted that while the existing house is in effect unauthorised development it is immune from enforcement action.
- On this basis it is submitted that it would not be correct that permission should be refused on the basis that it would be contrary to condition no. 4 of the permission granted under D00A/0541.
- For clarification the area of the total landholding is 23 acres and the applicant's parents are the joint owners of the landholding.
- There is reference in the report of the Planning Officer that no rationale was provided why a family flat would not be suitable for the applicant. The applicant is married and expecting a child, therefore a family flat of less than 50sq m and interlinked with the primary dwelling is wholly unsuitable for his current and future housing needs.

- The report of the EHO required further information. Point 1 required clarification on the proposed on-site treatment system. The answer to Section 18 in the planning application form stated a conventional septic tank is proposed. This is incorrect. An Oakstown BAF 8PE Waste Water Treatment System is proposed.
- A response to the other matters raised in relation to the proposed on-site treatment system was prepared by Traynor Environmental Limited.
- In conclusion it is requested that the Board overturn the decision of the Council and grant permission for the reasons set out in the appeal.

## 6.2. Planning Authority Response

- It is considered that the grounds of appeal do not raise any new matters which in the opinion of the Planning Authority would justify a change of attitude to the proposed development.

## 7.0 Assessment

The main issues in this appeal are those raised in the grounds of appeal. It is also considered however, that the matter of on-site effluent treatment should be assessed. Appropriate Assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Rural Housing policy
- Design and visual amenity
- Effluent treatment
- Appropriate Assessment
- Other issues

### 7.1. Rural Housing policy

- 7.1.1. With regard to compliance with rural housing policy the proposal should be in accordance with the provisions of the Sustainable Rural Housing Guidelines and the

provisions of the Dún Laoghaire-Rathdown County Development Plan 2016 – 2022, as it relates to settlement in rural areas. The appeal site is located in an area identified as an Area Under Strong Urban Influence on Map No.1 – Indicative Outline of NSS Rural Area Types in the Sustainable Rural Housing Guidelines. These areas are typically close to larger urban centres which are under pressure for housing in the countryside and have road networks which are heavily trafficked. The guidelines suggest that certain classes of persons e.g. those occupied full time or part-time in agriculture, forestry, those who are an intrinsic part of the rural community, sons/daughters of farmers and returning emigrants, may be considered for housing in the countryside.

- 7.1.2. The National Planning Framework ('Project Ireland 2040: Building Ireland's Future') states that it will be necessary for applicants to demonstrate 'a functional economic or social requirement for housing need' (with National Policy Objective No. 19 stating that the provision of single housing in rural areas under urban influence is to be based on the core consideration of a demonstrable economic or social need to live in a rural area and the siting and design criteria for rural housing contained in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements).
- 7.1.3. The subject site of the proposed development is located on lands zoned objective 'B' in the Dún Laoghaire Rathdown County Development Plan, 2016-2022. It is the stated land use zoning objective 'To protect and improve rural amenity and to provide for the development of agriculture' wherein proposals for residential development are deemed to be 'open for consideration' subject to the rural housing policy of the Plan.
- 7.1.4. Section 2.1.4 of the Development Plan refers to 'Rural Housing' it sets out that in order to protect the rural character of the countryside and to foster sustainable development, the Planning Authority has adopted a restrictive approach as regards the eligibility of prospective applicants for rural housing with only 'genuine and bona fide cases for new residential development within the County's rural areas' to be facilitated.
- 7.1.5. Policy RES16 of the Development Plan refers to 'Management of One-off Housing' it states that it is the policy of the Council 'to restrict the spread of one-off housing into

the rural countryside and to accommodate local growth into identified small villages subject to the availability of necessary services'. This policy objective also sets out that much of the demand for such housing is urban-generated and that 'one-off housing may be acceptable where it is clearly 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 local need to reside in a rural area due to locationally-specific employment or local social needs (subject to compliance with the specific zoning objectives)'.

- 7.1.6. Development Plan policy as set out in Sections 2.1.4 & 8.2.3.6 states that within areas zoned as 'B' 'To protect and improve rural amenity and to provide for the development of agriculture', the development of dwellings will only be permitted on suitable sites where:
  - 7.1.7. 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 the rural community), or
  - 7.1.8. 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).
- 7.1.9. As set out in the details submitted with the application and appeal the applicant Aodhan Roe is native to the area. He attended primary and secondary school in the locality and he was baptised and confirmed in the parish. He has returned from living in Canada and he is qualified stone mason. Mr. Roe states that he intends to run his parent's business of stone working and livestock farming as they intend to retire. As set out in Section 8.2.3.6 of the Development Plan a strong justification in relation to the need for an additional dwelling in the rural area is required. The family landholding is 23 acres (9.3 hectares) and it contains the applicant's parents' home 'The Glen'. Accordingly, having regard to the size of the landholding and the presence of the existing family home, I would consider that there is no requirement

for a second dwelling to run the existing business of stone working and livestock farming.

- 7.1.10. The report of the Planning Officer in their assessment of the application makes reference to section 8.2.3.5 (vi) of the Development Plan which relates to 'Family Member/Granny' Flat – Rural. It is suggested in the report that applicant did not consider a family flat built onto the existing dwelling 'The Glen'. The matter is responded to in the first party appeal. It is stated that the nature of a family flat including its size and layout would make it unsuitable for the applicant and his family to live in.
- 7.1.11. Accordingly, although the applicant Mr. Aodhan Roe would seem to have intrinsic links to this particular rural area and thus may satisfy certain aspects of the eligibility criteria set out in both the Development Plan and the 'Sustainable Rural Housing, Guidelines for Planning Authorities', there is nevertheless a specific requirement to demonstrate a genuine rural-generated need to reside at the proposed location. It is also notable that the applicant would not be involved in full-time farming and the nature of his employment in the stone masonry business does not have a locational or functional need to be at this particular site.
- 7.1.12. In conclusion, based on the documentation submitted as part of the application and appeal, including the nature of the applicant's employment and the existing dwelling on the 9.3 hectare family landholding, I am not satisfied that the applicant has demonstrated that they come within the scope of the rural-generated housing need criteria for a house in this rural location, having regard to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities, issued by the Department of the Environment, Heritage and Local Government in April 2005, wherein it is indicated that it is policy to distinguish between rural-generated housing need and urban-generated housing need in Areas under Strong Urban Influence (such as applies in this instance) and accordingly considered that the proposed development would represent urban-generated rural housing.

## **7.2. Design and visual amenity**

- 7.2.1. The second refusal reason issued by the Planning Authority stated that the proposed development would due to the design and prominent position would interfere with the character of the landscape which it is necessary to preserve.

- 7.2.2. The site is located within the Dublin Mountains circa 1.5km to the north of the summit of Three Rock Mountain. The site is located at the 230m contour. It is elevated above the surrounding road network including the Woodside Road situated to the east and the Blackglan Road to the north-east. The subject site is zoned Objective 'B' which seeks 'to protect and improve rural amenity and provide for the development of agriculture'. The site is situated within a transitional area it adjoins lands zoned Objective 'G' which seeks 'to protect and improve high amenity areas'. Section 8.3.2 of the Development Plan refers to Transitional Zonal Areas and it advises that in dealing with development proposals in these contiguous transitional zonal areas, it is necessary to avoid developments which would be detrimental to the amenities of the more environmentally sensitive zone. Therefore, given the site context, I would consider it is a visually sensitive location.
- 7.2.3. The applicant is seeking permission for a dormer house with an overall gross floor area of circa 150sq m and a height of circa 8.183m. The dwelling has frontage of circa 27m and proposed design features a large roof area which occupies a larger area than the main section of the house. This design with a large prominent roof and elongated frontage would I consider appear visually obtrusive.
- 7.2.4. As part of the appeal revised plans were submitted for an L-shaped dwelling with a ridge height of 6.916m. While this would marginally reduce the proposed height of the dwelling and the extent of the proposed frontage, having regard to the elevated and exposed nature of the site I do not consider such to be a sufficient measure to alleviate concerns regarding impact upon visual amenity.
- 7.2.5. Having regard to the elevated nature of the site and the height and scale of the proposed dwelling and its siting in a prominent position, I consider that it would be highly visible from the surrounding road network to the east and north-east. Accordingly, I consider that the proposed development would form a highly visible and intrusive feature within the landscape and that it would seriously injure the visual amenities of this sensitive rural area.

### 7.3. **Effluent treatment**

- 7.3.1. It is proposed to install An Oakstown BAF a secondary wastewater treatment system and percolation area. It is proposed to locate the treatment plant circa 14.3m to the east of the dwelling and the soil polishing filter is located on the layout plan 14m to



the north-east of the dwelling. Regarding water supply, a private well is proposed. Table 6.1 of the EPA Manual – Treatment Systems for Single Houses sets out the minimum separation distances, the minimum distance from a watercourse or stream to a percolation area is stated as 10m and the minimum distance from a road to a percolation area is stated as 4m. There are no watercourses within 10m of the proposed percolation area. No groundwater or bedrock were encountered in the trial hole.

- 7.3.2. The site suitability assessment indicates that a T value of 15.7 was recorded on site. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. P tests were also carried out and a P value of 20 was recorded. Table 6.3 of the EPA Manual advises that where the P value is greater than 3 and less than 75 then the site is suitable for a secondary treatment system with polishing filter at ground surface or overground.
- 7.3.3. The Environmental Protection Agency Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses 2010 provides guidance on the provision of wastewater treatment and disposal systems for new single houses. Annex B of the publication refers to Groundwater Protection Response. It is stated that when choosing a site consideration should be had to any nearby groundwater sources and the vulnerability of the underlying groundwater. The Code of Practice sets out that the risk from onsite wastewater treatment systems is mainly influenced by its proximity to a groundwater source, the value of the groundwater resource and the depth of the water table.
- 7.3.4. The site is located within an area classified by GSI as having a poorly productive groundwater aquifer. The groundwater protection response is R2<sup>1</sup>. As per the EPA manual, in a R2<sup>1</sup> protection zone, on site effluent treatment would be acceptable subject to normal good practice.
- 7.3.5. Having regard to the information submitted including the site characterisation report and the proposal to install a secondary treatment system with soil polishing filter, I would consider that site is suitable for the proposed on-site effluent treatment system subject to the system being constructed and maintained in accordance with the details submitted.

#### 7.4. **Appropriate Assessment**

- 7.4.1. 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.

#### 7.5. **Other Issues**

- 7.5.1. The third reason for refusal issued by the Planning Authority stated that the proposals would materially contravene condition 4 attached to an existing permission D00A/0541 that relates to the subject lands. Under Reg. Ref. D00A/0541 permission was granted for revisions to permitted residential development Reg. Ref. D95A/0407. Comprising a revised dormer style house and associated site works, provision of a well and septic tank as previously approved at The Glen, Sandyford, Dublin 18. Condition no. 4 of the permission states;

*This permission shall have no effect unless and until the applicant has entered into an agreement with the County Council under section 38 of the Local Government (Planning and Development) Act, 1963, (as amended) sterilizing the remainder of the land (23.5 acres), of which the site forms part, outlined in red on the site location map lodged with the Planning Authority on 6 June 2000, from further residential development and as agreed in the letter dated 15th August 2000.*

*REASON: In the interests of zoning objective for the site and in the interests of the proper planning and development of the area.*

- 7.5.2. According, this condition sterilized the landholding which includes the appeal site. It is set out in the appeal that while the applicant's architect confirmed their willingness to enter into a sterilisation agreement with the Council in a letter dated 15<sup>th</sup> of August 2000, the parties involved did not proceed to enter the agreement and therefore landholding is not sterilised. An application was made under Reg. Ref. D17A/0811 by the applicant's parents Eugene and Carol Roe to change in the terms of condition

4 of planning permission Reg. Ref. D00A/0541 removing the requirement that the landholding be sterilised from further residential development. The Planning Authority refused permission on the basis that notwithstanding the legal standing of the permission it is proposed to amend it is considered that the change in the terms of condition 4 of planning permission Reg. Ref D00A/00541 by removing the requirement that the landholding be sterilised from further residential development, would materially contravene the policy objectives LHB2: Preservation of Landscape Character Areas and Policy RES16: Management of One-off Housing of the Dun Laoghaire Rathdown County Development Plan 2016 – 2022.

- 7.5.3. It is submitted in the appeal that while the existing house is in effect unauthorised development it is beyond the statute of limitations for enforcement proceedings. Therefore, it is argued in the appeal that permission should not be refused on the basis of contravention of condition no. 4 of the permission granted under D00A/0541. While, I note the argument made in respect of this matter, the fact remains that condition no. 4 was attached to the permission granted under Reg. Ref. D00A/0541 in order to ensure that there would be no additional residential development on the landholding. Notwithstanding the fact that the sterilization agreement was not entered into the planning permission has been implemented and the proposed development would contravene materially a condition attached to Reg. Ref. D00A/0541.

## **8.0 Recommendation**

- 8.1. I recommend a refusal of permission for the reasons and considerations as set out below.

## **9.0 Reasons and Considerations**

1. Having regard to the location of the site within an area under strong urban influence as identified in the “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005 wherein it is policy to distinguish between urban-generated and rural generated housing need, and the location of the site within an area where housing is restricted to persons demonstrating

a genuine requirement for housing in accordance with policy RES16 and land use objective 'B' "To protect and improve rural amenity and to provide for the development of agriculture" of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, and to National Policy Objective 19 of the National Planning Framework, adopted by the Government, in relation to rural areas under urban influence, such as in the current case, which states that it is policy 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 viability of smaller towns and rural settlements", it is considered that the applicant has not demonstrated that they come within the scope of the housing need criteria as set out in the Guidelines and that they have not demonstrated an economic or social need to live in this rural area in accordance with national policy and the Dún Laoghaire-Rathdown County Development Plan 2016- 2022. Furthermore, the Board is not satisfied that the applicants housing needs could not be satisfactorily met in an established smaller town or village/settlement centre. The proposed development, in the absence of any definable or demonstrable based need for a house in this rural area, would contribute to the encroachment of random rural development in the area, and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, contravene the Ministerial Guidelines, and would be contrary to national policy. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2. Having regard to the topography of the site, and to the elevated positioning, scale and height of the proposed dwelling, it is considered that the proposed development could not be effectively assimilated into the landscape and would, therefore, form a discordant and obtrusive feature on the landscape at this rural location. The proposed development would be contrary to the provisions of the Dún Laoghaire-Rathdown County Development Plan 2016-2022, specifically Section 8.2.3.6 Rural Housing (ii) Design, Policy LHB2 Preservation of Landscape Character Areas and Section 8.3.2 Transitional

Zoning Areas of the County Development Plan. The proposed development would seriously injure the visual amenities of the area, and, by itself and by the precedent it would set, would militate against the preservation of the rural environment and would therefore, be contrary to the proper planning and development of the area.

3. The proposed development would contravene materially a condition attached to an existing permission for development namely, condition number 4 attached to the permission granted by the Planning Authority under planning register reference number D00A/0541 that relates to the subject lands and sterilizes the landholding further residential development.

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Siobhan Carroll  
Planning Inspector

23<sup>rd</sup> of July 2019