



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305380-19

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<b>Development</b>	Detached single storey treatment room/home office (non-habitable); wastewater treatment system; landscaping and associated works.
<b>Location</b>	Gleann na Coille, Killakee Road, Rathfarnham, Dublin 16
<b>Planning Authority</b>	South Dublin County Council
<b>Planning Authority Reg. Ref.</b>	SD19B/0248
<b>Applicant(s)</b>	Chanelle Moynagh
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant(s)</b>	Chanelle Moynagh
<b>Date of Site Inspection</b>	28.11.2019
<b>Inspector</b>	Anthony Kelly

## 1.0 Site Location and Description

- 1.1. The subject property is known as Gleann na Coille, located on the east side of Killakee Road in the upland area of South Dublin County approximately 0.7km south of the vehicular entrance to the Hell Fire Club. The site is occupied by a large, detached 1 ½ storey house set back approx. 50 metres from the public road. The house is partially hidden from view of the public road by the roadside boundaries, lower finished floor level and extent of vegetation to the front of the house.
- 1.2. Ground levels throughout the overall 3.16 hectares site slope down in a general west to east direction. It is proposed to locate the subject structure on a plateau which appears to have been created by previous engineering works. The plateau is accessed via a track from the north side of the house which slopes down and curves around the rear of the house. The plateau has a significantly lower ground level than the house. There is a line of retaining stone blocks along the base of the slope immediately west of the footprint of the proposed structure.
- 1.3. The central and eastern section of the site largely comprises an open field. Significant areas of mature tree coverage are located immediately to the north, east and south. It appears some tree coverage in the eastern area may be located within the site boundary.

## 2.0 Proposed Development

- 2.1. The proposed development is for permission for a detached single-storey treatment room/home office (non-habitable), a wastewater treatment system, landscaping and associated works. The proposed structure has a stated floor area of 63sqm with an indicated height of 5.466 metres.
- 2.2. The proposed external finish to the structure is burnt larch and render with a zinc roof. It has a contemporary design and includes substantial glazing to the front/east elevation. The planning application was accompanied by a 'Planning Report & Design Statement', details of proposed landscaping, a 'Bat Survey' and a Site Characterisation Form with associated documentation.

## 3.0 Planning Authority Decision

### 3.1. Decision

The planning authority decided to refuse permission for 4 no. reasons as follows:

1. The site is zoned High Amenity Dublin Mountains with the objective: To protect and enhance the outstanding natural character and amenity of the Dublin Mountains areas. The proposed development located on a visible hillside would result in the encroachment of ancillary residential structures within a landscape area of High Amenity as set out in the South County Dublin Development Plan 2016-2022, where it is an objective to protect and preserve significant views at this location. Thus, the proposed development would interfere with a view of special amenity value which it is necessary to preserve and would be contrary to the proper planning and sustainable development of the area.
2. The proposed development, by reason of the use of cut and fill on a site with steep topography, would materially contravene Policy H16 'Steep or Varying Topography Sites' Objective 2 and Policy H27 'Rural House and Extension Design' which both have stated objectives to avoid the use of intrusive engineered solutions. As such the proposed development would materially contravene the provisions of the South Dublin County Development Plan 2016-2022 and would be contrary to the zoning objective for the area (zoned High Amenity Dublin Mountains with the objective: To protect and enhance the outstanding natural character and amenity of the Dublin Mountains areas) and contrary to the proper planning and sustainable development of the area.
3. The site is zoned High Amenity Dublin Mountains in the South Dublin Development Plan 2016-2022 with the objective: To protect and enhance the outstanding natural character of the Dublin Mountains Area. Residential development is Open for Consideration under this zoning and must accord with the Council's policy for residential development in Urban areas. The proposed development does not comply with Policy H27 of the County Development Plan, in particular in relation to criteria under objective 1 relating to the following:

- Impact on the landscape including views and prospects;
- Impact on the environment including flora and fauna;
- Impact on the site's natural contours and natural drainage features;
- Field Boundaries;
- Intrusive Engineering solutions;
- Haphazard forms of development.

As such, the proposed development contravenes the policy and the land-use zoning objective under the County Development Plan, and would therefore not accord with the proper planning and sustainable development of the area.

4. The Planning Authority is not satisfied, on the basis of the Bat Survey provided, that the development would not lead to disturbance or destruction of roosting sites for bats, which are a protected species.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The Planner's Report is the basis for the planning authority decision. Apart from issues related to the reasons for refusal as set out above, the report notes, inter alia:

- The existing internal roadway appears to be of recent construction and the subject site also appears to have been recently cleared of trees. It appears unauthorised works have taken place.
- The previous planning application on site, P.A. Reg. Ref. SD18A/0258.
- While the Environmental Health Officer is satisfied with the development it is not clear to the planning authority why a separate wastewater treatment system is required for ancillary accommodation where no increase in occupancy is anticipated.
- The submitted CGI appears to be highly inaccurate.
- No rationale submitted as to why the uses within the proposed structure cannot be located in an extension to the existing house which may be an appropriate solution.

- There is no obvious logic to the proposed layout and would constitute haphazard development.
- The need for EIA can be excluded at preliminary examination.
- Comprehensive appropriate assessment screening cannot be undertaken because insufficient information has been submitted.

### 3.2.2. Other Technical Reports

**Parks & Landscape Services/Public Realm** – A refusal is recommended. No arborists report submitted, the development appears to impact on existing hedgerows/trees, it is not in accordance with a number of objectives of Policies G2, G6 and HCL15 of the County Development Plan 2016-2022 and the bat survey is outdated.

**Environmental Health Officer** – No objection subject to conditions.

**Water Services Section (Surface Water)** – Further information is recommended in relation to percolation tests for the proposed soakaway(s).

## 4.0 Planning History

There has been a previous recent planning application on site. This is:

P.A. Reg. Ref. SD18A/0258 – Permission refused on 10.09.2018 for a 196sqm single-storey three-bedroom with treatment room bungalow, shared vehicular entrance and landscaping on effectively the same footprint as the current proposal and with a very similar design style. There were 9 no. reasons for refusal which incorporated insufficient justification for the proposed house and non-compliance with the rural housing policy; hinder the achievement of the policies and objectives of the National Planning Framework to consolidate existing urban settlements; represent the proliferation of further one-off housing in the designated strategic Green Belt and Rural Hinterland of the Metropolitan Area under the Regional Planning Guidelines 2010-2022; adversely affect significant and protected views within a landscape area of High Amenity; no provision of independent road frontage; undesirable ribbon/backland development; materially contravene policies of the

County Development Plan 2016-2022 to avoid the use of intrusive engineered solutions and insufficient detail submitted in relation to the proposed soakaway.

## 5.0 Policy Context

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

The site is in an area zoned Objective HA (LV, DV, DM); To protect and enhance the outstanding natural character and amenity of the Liffey Valley, Dodder Valley and Dublin Mountains areas.

Killakee Road (R115) to the west, which the site is accessed from, and Cruagh Road approx. 550 metres to the south/south west, have objectives to 'Protect and Preserve Significant Views' to both sides of the road.

There are a number of specific policies and objectives in the Plan referenced within the Planner's Report and the reasons for refusal. These include:

Housing (H) Policy 16 – Steep or Varying Topography Sites – Objective 2 – To avoid the use of intrusive engineered solutions, such as cut and fill platforms, embankments or retaining walls on sites with steep or varying topography.

Housing (H) Policy 27 – It is policy of the Council to ensure that any new residential development in rural and high amenity areas, including houses and extensions, are designed and sited to minimise visual impact on the character and visual setting of the surrounding landscape.

H27 Objective 1 – Ensure that all new rural housing and extensions within areas designated with ... Zoning Objective 'HA-DM' (to protect and enhance the outstanding natural character of the Dublin Mountains Area)...:

- Is designed and sited to minimise impact on the landscape including views and prospects of natural beauty or interest or on the amenities of places and features of natural beauty or interest including natural and built heritage features; and
- Will not have a negative impact on the environment including flora, fauna,

soil, water (including ground water) and human beings and;

- Is designed and sited to minimise impact on the site's natural contours and natural drainage features; and
- Retains and reinstates traditional roadside and field boundaries; and
- Is designed and sited to circumvent the need for intrusive engineered solutions such as cut and filled platforms, embankments or retaining walls; and
- Would comply with Code of Practice Wastewater Treatment Systems Serving Single Houses, EPA (2009) or other superseding standards; and
- Would not create or exacerbate ribbon or haphazard forms of development.

Heritage, Conservation and Landscapes (HCL) Policy 7 Landscapes – It is the policy of the Council to preserve and enhance the character of the County's landscapes particularly areas that have been deemed to have a medium to high Landscape Value or medium to high Landscape Sensitivity and to ensure that landscape considerations are an important factor in the management of development.

Heritage, Conservation and Landscapes (HCL) Policy 8 Views and Prospects – It is the policy of the Council to preserve Views and Prospects and the amenities of places and features of natural beauty or interest including those located within and outside the County.

## 5.2. **Natural Heritage Designations**

Wicklow Mountains SAC is approx. 1.35km to the south and Wicklow Mountains SPA is approx. 1.4km to the south east. Glenasmole Valley SAC and pNHA is approx. 2.45km to the west.

## 5.3. **EIA Screening**

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, 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 stage, and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The main issues raised in the appeal can be summarised as follows:

- The applicant is a full-time carer for her mother. (A letter of support from a medical professional has been submitted with the appeal. The letter appears to be more pertinent to P.A. Reg. Ref. SD18A/0258). The proposed structure is to be used as a treatment space for her mother and as a home office for family use. The structure will be ancillary to the house and is non-habitable.
- The proposed structure was assessed by the planning authority as a dwelling. It is not proposed to be used as a dwelling. Policy H27 is not the appropriate policy. This is a procedural error and a fundamental issue.
- The proposed structure is at a lower level than the house, will be completely out of public view and will be sheltered by new planting. There will be no impact on existing views or prospects. There will be no adverse impact on the visual amenity of the area.
- External finishes proposed are high quality modern materials.
- The proposed building will not have any adverse impact on bats. P.A. Reg. Ref. D18A/0258 came to a completely different conclusion in relation to bats. The bat report concludes that the proposed works have no direct link to bats. Bat mitigation measures are proposed.
- The planning authority claim that the submitted photomontage is inaccurate is refuted.
- Existing field patterns are undisturbed by the proposed development. Historic mapping shows this has always been one large field. No historic field boundaries are impacted. Historic maps are included.



- It is not proposed to remove any trees. Planning authority allegations of potentially unauthorised development is refuted. There are no foundations or other built works that would have required planning permission.
- The plateau is a natural flat area. The cut and fill area is very small. The development is miniscule in the context of the 3.1-hectare site and the development does not comprise an intrusive engineered solution. The site has the capacity to absorb the development.
- The proposal is not considered to be haphazard. It is essentially a garden room in the garden of a very large site. It is logical and well thought out and includes landscaping that will enhance the garden area.

## 6.2. **Planning Authority Response**

The planning authority confirms its decision and the appeal raises no new issues.

## 7.0 **Assessment**

The main issues are those contained within the planning authority's reasons for refusal. The issue of appropriate assessment also needs to be addressed. The issues can be dealt with under the following headings:

- Visual Impact
- County Development Plan 2016-2022 Policies
- Material Contravention
- Impact on Bats
- Appropriate Assessment

### 7.1 **Visual Impact**

7.1.1 The first three reasons for refusal cited by the planning authority include reference to the adverse visual impact that the proposed development would have on the visual

amenity of the area, that it would interfere with views of special amenity value and it would contravene the zoning objective.

7.1.2 The subject site is 3.1 hectares in area with ground levels sloping down in a general west to east direction from the public road. The existing 1 ½ storey house is to the front/west of the property and its' presence is partially hidden by existing roadside boundaries, a finished floor level lower than the public road and existing trees and vegetation between the road and the house. The proposed structure is to be located to the rear/east of the house, at a floor level approx. 6 metres below that of the house. The proposed structure has a stated floor area of 63sqm with an indicated height of 5.466 metres. There is a relatively substantial area of mature tree coverage immediately to the north, east and south of the subject site and it appears an area of the mature tree coverage to the east is within the identified site boundary. There are no public roads in the immediate vicinity apart from the Killakee Road to the west.

7.1.3 Given the relatively limited scale of the proposed structure, its finished floor level in the context of the existing house, its location to the rear of the existing house, the extent of mature tree coverage immediately adjacent to the site and the absence of any public areas in close vicinity to the north, east or south I do not consider that the proposed structure could be reasonably considered to be on a visible hillside, to interfere with a view of special amenity value or be contrary to the zoning objective. I do not consider visual impact to be a reasonable reason for refusal in this application.

## **7.2 County Development Plan 2016-2022 Policies**

7.2.1 The third reason for refusal refers specifically to Policy H27 Objective 1 of the South Dublin County Council Development Plan 2016-2022. This policy is contained within Section 2.5.8 (Rural House & Extension Design) of the Plan.

7.2.2 This section and policy refers explicitly to new houses and extensions in the rural area. However, the proposed structure is not a new house and it is not an extension to the existing house. Notwithstanding P.A. Reg. Ref. SD18A/0258, which was for a new house, the current application is for a structure containing a treatment room, home-office and WC/shower room, and must be assessed as such. The submitted

Planning Report & Design Statement and the appeal documentation clarify that it is for non-habitable use.

7.2.3 As the proposed structure is not a house and is not an extension to a house, I do not consider that Policy H27 of the Plan is applicable. The Plan makes no comment on ancillary residential structures in the rural area such as a domestic garage or a garden room. Therefore, the proposed structure shall be assessed on its own merits.

7.2.4 The uses set out in the application are considered to be reasonably ancillary to the existing house. The proposed structure is relatively modest in the context of the scale of the existing house and the 3.1-hectare site size. It will not be visible from the public realm or comprise an obtrusive or incongruous feature on the landscape. Subject to appropriate conditions restricting its use I consider the proposed structure to be acceptable in principle.

### 7.3 **Material Contravention**

7.3.1 The second reason for refusal in the decision of the planning authority states that the development would materially contravene Policies H16 (Steep or Varying Topography Sites) Objective 2 and H27 (Rural House & Extension Design) of the South Dublin County Council Development Plan 2016-2022.

7.3.2 In this context, if the Board is minded to grant permission for the proposed development, section 37(2) of the Planning and Development Act, 2000 (as amended) must be considered. Section 37 (2) requires that if the planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in certain circumstances. I do not share the view of the planning authority that the development would materially contravene the development plan for the area. The policies referenced in the reason for refusal are general policies rather than policies which relate specifically to the appeal site. It is not considered, in relation to Policy H16 Objective 2, that intrusive engineered solutions are proposed. The plateau area on which the structure is proposed is in situ and any cut and fill/intrusive engineered solutions required will be limited. In relation to Policy H27 which is also referenced in the second reason for refusal, it is not considered that the subject structure can

reasonably be assessed under that policy as it is not a house or an extension to a house.

7.3.3 Accordingly, I do not consider that the proposed development, if permitted, would materially contravene the South Dublin County Council Development Plan 2016-2022.

#### **7.4 Impact on Bats**

7.4.1 The fourth reason for refusal states the planning authority is not satisfied, on the basis of the bat survey provided, that the development would not lead to disturbance or destruction of roosting sites for bats.

7.4.2 It is noted that the Bat Survey submitted with the application, while dated 10.06.2019, is the same survey as that submitted under P.A. Reg. Ref. SD18A/0258 with surveys undertaken in September and October 2017. Inter alia, this noted one roost within the existing house.

7.4.3 The proposed development involves provision of a single-storey structure. The existing roost is not affected and the development does not involve the removal of any trees or hedge lines. The plateau area on which it is proposed to construct the building is in situ. Mitigation measures such as bat-sensitive lighting to the development are proposed. It is noted that the issue of impact on bats was not included in the reasons for refusal on P.A. Reg. Ref. SD18A/0258 which was for a larger proposed structure on a similar footprint.

7.4.4 I do not consider that the works proposed will have any undue impact on bat activity in the area. The mitigation measures cited in the submitted Bat Survey can be attached to any grant of permission that may issue.

#### **7.5 Appropriate Assessment**

7.5.1 The Planner's Report states that, in the absence of sufficient information pertaining to water services (surface water disposal) AA screening could not be undertaken.

7.5.2 The Wicklow Mountains SAC is approx. 1.35km to the south and Wicklow Mountains SPA is approx. 1.4km to the south east. Glenasmole Valley SAC is approx. 2.45km

to the west. The Wicklow Mountains sites have a higher ground level than the subject site. Surface water disposal is not a significant issue given the relatively limited scale of the proposed development and it can be addressed by way of compliance. There is no pathway or connectivity to a European site. It is noted that the Environmental Health Department was satisfied with the effluent treatment element of the development and indicated no objection subject to conditions.

7.5.3 Having regard to the nature and scale of the development proposed and to the nature of the receiving environment it is not considered that any appropriate assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

I recommend that planning permission should be granted, subject to conditions, for the reasons and considerations as set out below.

## **9.0 Reasons and Considerations**

Having regard to the provisions of the South Dublin County Council Development Plan 2016-2022, and the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not result in any undue visual impact on the landscape, would not materially contravene the policies of the Plan and would not have any undue adverse impact on bats. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed 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. (a) The proposed home treatment room/home office structure shall be used solely for those purposes. The structure shall not be used as habitable accommodation or as an independent self-contained living unit.  
(b) The subject structure shall not be sold, let or otherwise transferred or conveyed, save as part of the house.

**Reason:** In the interests of clarity, compliance with the rural housing policy of the South Dublin County Council Development Plan 2016-2022 and the proper planning and sustainable development of the area.

3. Details of the materials, colours and textures of all the external finishes to the proposed structure shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

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

4. 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.

**Reason:** In the interest of public health.

5. The applicant or developer shall enter into a water and/or waste water connection agreement(s) with Irish Water, prior to commencement of development.

**Reason:** In the interest of public health.

6. The mitigation measures set out in the submitted Bat Survey shall be implemented in full.

**Reason:** In the interest of the protection of bats.

7. (a) A maintenance contract for the lifetime of the wastewater treatment system shall be entered into with the supplier of the system or with an appropriate maintenance firm. Documentary evidence of an on-going maintenance agreement shall be submitted to the planning authority within 4 weeks of the installation of the wastewater treatment system.

(b) Within three months of the first use of the structure the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and the percolation area is constructed in accordance with the requirements of the Code of Practice on Wastewater Treatment and Disposal Systems serving Single Houses issued by the Environmental protection Agency (2009).

**Reason:** In the interest of public health.

8. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefitting 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, as amended. The contribution shall be paid prior to 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 An Bord Pleanála to determine the proper application of the terms of the Scheme.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, 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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Anthony Kelly  
Planning Inspector

05.12.2019