



An
Bord
Pleanála

Inspector's Report ABP-306175-19

Development	Construction of house
Location	Springfield, Glenamuck Road, Carrickmines, Dublin 18.
Planning Authority	Dun Laoghaire Rathdown County Council
Planning Authority Reg. Ref.	D19A/0145
Applicant(s)	Seonadh O'Leary
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	First Party
Appellant(s)	Seonadh O'Leary
Observer(s)	None
Date of Site Inspection	27 th February 2020
Inspector	Mary Crowley

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1.0 Site Location and Description

- 1.1. The appeal site with a stated area of 0.4 ha is located at Springfield, Glenamuck Road, Carrickmines to the rear of the existing Carrickmines Equestrian Centre located off Springfield Lane. The site is accessed off a private lane that leads from Springfield Lane to the equestrian centre. There are three detached dwellings located off the lane together with sheds, stables and arenas associated with the equestrian centre. The site is located to the east of the stables and yard area and to the west of an existing dwelling located to the rear of the site.
- 1.2. The immediate area is generally rural with scattered housing. The site is proximate to Glenamuck Road, to the west, which consists of many residential developments and “The Park Carrickmines” a retail and commercial shopping centre. The Carrickmines Golf Club is located east of the site, with the M50 located further to the east / north east.
- 1.3. A set of photographs of the site and its environs taken during the course of my site inspection is attached. I also refer the Board to the photos available to view on the appeal file. These serve to describe the site and location in further detail.

2.0 Proposed Development

- 2.1. Permission is sought for development consisting of a single storey three-bedroom dwelling house (174sqm), new vehicular access, two associated car parking spaces, waste water treatment system, private amenity space, landscaping and boundary treatment, and all associated site development and drainage works.
- 2.2. This application was accompanied by a Section 47 agreement under the Planning and Development Act 2000 (as amended), *to prevent the implementation of a previously residential dwelling on adjacent land in the ownership of the applicant (Reg. Ref.: D12/0332) which permitted a part two-storey, part single storey dwelling, waste water treatment system and all ancillary works/ necessary to facilitate the development.*
- 2.3. The application was accompanied by a Site Suitability Assessment and a Planning Report
- 2.4. Further Information was submitted on the **23rd October 2019** and may be summarised under the following headings:

2.4.1. **Planning Matters**

- The applicant has already been granted a rural dwelling in the vicinity of the site and still has planning permission to build the dwelling approved under Reg Ref D12A/0336 as extended under Reg Ref D12A/0336/E. The proposed dwelling is smaller in scale than the surrounding dwellings and fits better into the surrounding landscape.
- A draft Section 47 Agreement was submitted as part of this planning application, which should permission be granted, would not allow a rural dwelling to be built on the site of Reg Ref D12A/0336.
- It is considered that due to its bulk, scale, mass and height as well as the high quality design, that the proposed development will have no potential negative impact for the area in such terms as visual prominence or impacts on views and prospects, or the natural or built heritage.
- The applicant has lived on the family landholding since childhood. It is family land with the family business also on site and most members of the family are involved in the running and management of the Equestrian Centre.

2.4.2. **Visual Impact**

- Photomontages demonstrate the extent of the proposed dwelling within the immediate surrounds of the site and views from various points close to the site.
- The proposed development is considered to fit well into the landscape and the proposed landscaping and boundary treatments will further assist in the proposed dwelling being masked when viewed from the M50 motorway.
- The dwelling is therefore considered to have minimal impact on the character and appearance of the surrounding area and the greater landscape.

2.4.3. **Boundary Treatment & Attic Plan**

- Details of the proposed Boundary Treatments, Tree Protection details, Tree Planting details and Hedge Planting have been prepared and submitted. A drawing of the attic level floor plan has also been prepared and submitted.

2.4.4. **Environmental Health Matters**

- The proposed system is 45m from the proposed well which is in full compliance with Table1.

- A revised Site Characterisation Form has been submitted which corrects the discrepancies outlined.
- Details of the existing wastewater treatment system and percolation areas that serve the existing three dwellings and Equestrian Centre is provided.

2.5. The submission was accompanied by the following:

- Planning Report
- Map (Drawing No 1202-SITE-0500a) showing all existing family owned properties and land in the surrounding area of the site.
- Map (Drawing No 1202-SITE-0500) which shows the site of Reg Ref D12A/0332 in blue within the red line boundary of the proposed development
- Photomontage Report
- Site Characterisation Form & Report

3.0 Planning Authority Decision

3.1. Decision

3.1.1. DLRCC issued a notification of decision to refuse permission for the following 2 no reasons:

- 1) *The site of the proposed development is located in an area zoned 'Objective G; to protect and improve high amenity areas' under the County Development Plan 2016-2022. Residential development is open for consideration in 'Objective G' zoned areas only where the application is in accordance with Council policy for development in rural areas. The applicant has not established compliance with Policy RES 16 of the County Development Plan 2016-2022 in terms of demonstrating a genuine need for housing in the area. Therefore, the development would conflict with the requirements for rural housing in 'High Amenity Zoning 'G' land as outlined under Policy RES 16 of the County Development Plan 2016-2022, would contravene materially a development objective indicated in the County Development Plan 2016-2022 for the zoning of land for the use solely or primarily of particular areas for particular purposes, would set an undesirable precedent for future similar development and would be contrary to the proper planning and sustainable development of the area.*

- 2) *The proposed development would be sited such that it would be visible on the skyline from parts of the M50 and would be likely to be injurious to visual amenities in this "High Amenity" zoned area. As such, the proposed development would be contrary to Section 3.3.1 of the sustainable rural housing guidelines 2005 and Section 2.1.4.2 of the County Development Plan 2016-2022.*

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The **Case Planner** in their first report sought further information summarised as follows:
 - 1) **Planning Matters** – (a) evidence of rural based employment linking her to the family business at Carrickmines Equestrian Centre and the extent of her role in the Equestrian Centre; (b) a map showing all existing family owned properties and lands; rationale as to why the subject site has been chosen for development; reasons why D12A/0322 site is no longer favourable; Visual Impact Assessment including the potential for views from the M50 and Details of the proposed boundary treatments and attic level floor plan; (c) The red line to be amended to include the site of D12A/0332
 - 2) **Environmental Health Matters** – (a) Site Characterisation form to address the significant slope on the land; (b) specify the exact position of proposed well demonstrating compliance with the EPA Code of Practice for Waste Water Treatment for Single Dwellings 2009; (c) the Ground Water Protection response should be R2¹ and (d) details of the four existing wastewater treatment systems and percolation areas that serve the existing three dwellings and Equestrian Centre or location of any wells in this area to be provided.
- Further information was requested on the **25th April 2019**.
- The **Case Planner** in their second report and having considered the further information submitted stated that the applicant has failed to demonstrate a case setting out a genuine need to reside in this rural area zoned Objective G and recommended that permission be refused accordingly. A second reason for refusal was subsequently added stating that the development would be likely to be

injurious to visual amenities in this "High Amenity" zoned area and would be contrary to Section 3.3.1 of the Sustainable Rural Housing Guidelines 2005 and Section 2.1.4.2 of the County Development Plan 2016-2022. The notification of decision to refuse permission issued by DLRCC reflects this recommendation.

3.2.2. Other Technical Reports

Planning Application

- **Environmental Health Officer Planning Report** – Further information was requested in relation to the slope of the site, compliance with the EPA Code of Practise, groundwater and the location of WWTS and percolation area for adjoining 3 no houses and Riding School together with any wells in the area.
- **Transportation** – No objection
- **Drainage Planning** – No objection in relation to surface water drainage subject to conditions as set out in the report.

Further Information

- **Environmental Health Officer** – No stated objection.

3.3. Prescribed Bodies

3.3.1. No reports recorded on the appeal file.

3.4. Third Party Observations

3.4.1. There are no observations recorded on the planning file.

4.0 Planning History

4.1.1. There were two previous planning applications to the west of this appeal site that are relevant to this appeal and referenced in the public notices summarised as follows:

- **Reg Ref D12A/0332** – DLRCC granted planning permission for a part single storey and part two storey dwelling house, wastewater treatment system, new access and all associated site development works subject to 15 no conditions. Condition No 2 attached an occupancy clause.

- **Reg Ref D12A/0332/E** – DLRCC granted planning permission for the extension of duration received under Reg Ref D12A/0332 subject to 2 no conditions. Condition No 1 requires that the development is carried out and completed in its entirety in accordance with the plans, particulars and specifications granted under Reg. Ref. D12A/0332. Condition No 2 requires that the extension of duration of permission is for five years and the works shall therefore be completed no later than 02/04/2023.

5.0 Policy Context

5.1. National Guidelines

5.1.1. Sustainable Rural Housing Guidelines for Planning Authorities (2005)

- **Section 3.3.1** – *Landscape, Natural and Cultural Features Landscape character assessment can help to inform policies in the development plan on the location and siting of rural housing. Landscape character requires a policy response in terms of the appropriate location and siting of rural housing in a manner that will not detract from those aspects of important landscapes considered valuable.*

Particular care should be taken to protect those features that contribute to local distinctiveness, including:

- *The pattern of landscape features (land-cover, habitats, trees);*
- *Historic and archaeological areas and features,*
- *Water bodies (including rivers, lakes, estuaries and coasts), and*
- *Ridges, skylines, topographical features, geological features, and important views and prospects.*

The key issue in relation to the development plan and the natural and cultural heritage is that relevant aspects of heritage, which are outlined in more detail in section 4, are identified in the plan and its accompanying maps. All areas of natural and cultural heritage importance within the functional area of the planning authority should be recorded. The identification of heritage items such as archaeology, protected structures, inland waterways etc on the development plan maps provides a valuable prompt to applicants and planning authority officials to ensure

that the conservation of such items is being fully taken into account in the preparation and assessment of rural housing proposals.

The development plan should outline the planning authority's responsibilities and objectives in relation to the conservation of the natural and cultural heritage. Furthermore the planning authority should also outline the matters which it proposes to take into account in cases where a rural housing proposal impacts on items, sites or areas of natural or cultural significance. The development plan should also make clear that all developments that have potential implications for cultural and natural heritage are referred to all relevant prescribed bodies for comment.

Early in the review of a development plan, planning authorities should liaise with the Department of Environment, Heritage and Local Government and, at their discretion, with other relevant local or national specialist heritage and conservation interests, with a view to seeking any input which could usefully update the plan's policies.

5.2. Development Plan

5.2.1. The operative Development Plan is the **Dun Laoghaire Rathdown County Development Plan 2016-2022**. The site is zoned **High Amenity Zoning Objective G** where the objective is *to protect and improve high amenity areas*. (Zoning Map No 9 refers). The following policy's and sections of the Development Plan are relevant to this appeal:

- **Policy RES 16 Management of One off Housing** - *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).

▪ **Section 2.1.4.2 - Glencullen Local Area Plan**

Glencullen Village and its environs are covered by a Local Area Plan (LAP) adopted in 2007, and subsequently extended until 2018. The Plan sets out the criteria and framework for the future development of this very sensitive landscape and it includes policies in relation to local housing need, the village core and rural clusters and site suitability. Other issues incorporated in the Plan include:

- *Physical and social infrastructure.*
- *Design principles (Glencullen Design Guide).*
- *The Glencullen River Corridor (and its tributaries).*
- *Protection of water sources and well fields.*
- *Settlement pattern.*
- *Future economic trends.*
- *Occupancy agreements.*

It is considered the broad policies and objectives – including the Glencullen Design Guide – potentially have a wider application beyond the confines of the Glencullen LAP area. In evaluating development applications in other rural parts of the County regard will be had to the guiding principles set out in the Glencullen Design Guide.

5.3. Natural Heritage Designations

- 5.3.1. The site is not located within a designated Natura 2000 site.

5.4. EIA Screening

- 5.4.1. Having regard to the nature and scale of the proposed development, 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

6.1.1. The first party appeal was prepared and submitted by Hughes Planning & Development Consultants and may be summarised as follows:

- The applicant previously achieved planning permission on a site situated within close proximity (approximately 275m) of the current application site, proving her rural need in the process.
- The revised location of the proposed dwelling allows for the clear separation of residential and commercial uses within the wider landholding under the ownership of the applicants family and will not compromise the future expansion of the equestrian centre.
- The revised proposal provides for a more sustainable form of development
- The proposed dwelling will have no undue impact on existing visual amenity within the immediate and wider area.

6.2. Planning Authority Response

6.2.1. DLRCC state that the grounds of appeal do not raise any new matter which, in the opinion of the Planning Authority, would justify a change of attitude to the proposed development.

6.3. Observations

6.3.1. There are no observations recorded on the appeal file.

6.4. Further Responses

6.4.1. There are no further responses recorded on the appeal file.

7.0 Assessment

7.1. This assessment is based on the plans and particulars submitted with the planning application on the 4th April 2019 as amended by further plans and particulars submitted on the 23rd October 2019.

7.2. Having regard to the information presented by the parties to the appeal and in the course of the planning application and my inspection of the appeal site, I consider the key planning issues relating to the assessment of the appeal can be considered under the following general headings:

- Principle
- Visual Amenity
- Section 47
- Appropriate Assessment
- Other Issues

7.3. Principle

7.3.1. DLRCC in their first reason for refusal state that the applicant has not established compliance with Policy RES 16 of the County Development Plan 2016-2022 in terms of demonstrating a genuine need for housing in the area and that the development would conflict with the requirements for rural housing in lands zoned 'High Amenity Zoning 'G'.

7.3.2. Under the provisions of the Dun Laoghaire Rathdown County Development Plan 2016-2022 the site is wholly contained within an area zoned High Amenity Zoning Objective G where the objective is *to protect and improve high amenity areas* (Zoning Map No 9 refers) and where residential developments are considered "open for consideration" *in accordance with Council Policy for Development in Rural Areas*. Policy RES 16 refers to the Management of One off Housing and recognises that one-off housing may be acceptable where it is clearly shown there is a *genuine local need to reside in a rural area due to locationally-specific employment*. To this end I refer to Section 8.2.3.6 Rural Housing of the Development Plan that sets out a detailed list of criteria against which rural housing developments will be evaluated. I have considered these criteria as follows. The issue of visual impact is discussed separately below.

- The appeal site is located on lands owned by the applicants family and used as part of a family run equestrian school as well as other family dwellings. Carrickmines Equestrian Centre has been operated by the applicants family since 1991 and it is stated that it is one of the largest equestrian centres in Ireland. The centre is owned by the applicants mother, while the applicant and her brothers co-manage it.
- The applicant states that they have lived on the family landholding / Equestrian Centre since childhood and that most members of the family, including the applicant are involved in the running and management of the Equestrian Centre and therefore needs to live close to the business. It is stated that development will provide a home for the applicant and her family and will allow for the continued running of the family run Equestrian Centre

7.3.3. In addition to the foregoing, I also consider it relevant to note that planning permission has already been granted to the applicant (Reg Ref D12A/0332 & Reg Ref D12A/0332E refers) at a different site within the overall family landholding. This permission has been extended to 2nd April 2023. The overriding issue of an existing permission in the applicants name is discussed in detail below. However just in terms of establishing local need I note that this previous application was considered by DLRCC in the context of a rural housing need and deemed acceptable. Thus reinforcing the applicants position as meeting a genuine requirement to live at this location.

7.3.4. Therefore in absolute terms, I am satisfied that the applicant has demonstrated a genuine requirement for housing at this location. However, as mentioned, a significant difficulty arises in this case in that the applicant has an extant permission within the family land holding. This matter is discussed separately below.

7.4. **Visual Impact**

7.4.1. DLRCC in their second reason for refusal stated that the development would be visible on the skyline from parts of the M50 and would likely to be injurious to visual amenities in this "High Amenity" zoned area and would be contrary to Section 3.3.1 of the Sustainable Rural Housing Guidelines and Section 2.1.4.2 of the Development Plan.

- 7.4.2. The proposed dwelling is in close proximity to both an existing residential dwelling (applicant's brother) and the equestrian centre and is somewhat similar to the previous scheme granted in 2013 albeit at a different location within the landholding. The current site gently slopes down from the applicant's brother's house, and having regard to the topography of the site allows for the proposed dwelling to sit comfortably within the landscape. Further the proposed dwelling has been designed to respect the surrounding area and is not considered to be an overdevelopment in terms of bulk or height, sitting respectfully within the landscape.
- 7.4.3. However, unlike the previous scheme, the appeal site is easily accessible by way of the existing roadway which currently provides access to applicant's brother's house and will not require additional construction for access. The dwelling approved in 2013 is to be served by a new access road off Springfield Lane which would run independently before linking to an existing service road within the site and ultimately running for a stated length of c250m to the dwelling.
- 7.4.4. The photomontages demonstrate the extent of the proposed dwelling within the immediate surrounds of the site and views from various points close to the site including the M50. It is evident that the proposed dwelling would be partially visible on the skyline upon approach along the M50 Motorway. However given the limited visibility of the existing dwelling, the manner in which the proposed site is situated behind existing natural screening and the fact that proposed supplementary planting will further screen the site, I agree with the applicant that the dwelling would not be injurious to the visual amenity of the M50.
- 7.4.5. Overall I am satisfied that the proposed development will have no potential negative impact for the area in such terms as visual prominence or impacts on views and prospects, or the natural or built heritage. It is therefore recommended that this second reason for refusal be set aside.

7.5. **Section 47**

- 7.5.1. There is no objection to the proposed development in principle in terms of housing need. However, as mentioned previously, a significant difficulty arises in this case in that the applicant already has an extant planning permission for a dwelling house

within the overall family landholding which was granted in 2013 and extended to 2nd April 2023 (Reg Ref D12A/0332 & Reg Ref D12A/0332E refers).

7.5.2. In order to overcome this situation the applicant has requested that this application is treated as a “substitute to the original application” and is willing to accept a condition requiring that a Section 47 agreement be agreed in writing with the Council to ensure that the permission granted would not be implemented. It is noted that the applicant is also willing to register this on the title deeds of the proposed dwelling should permission be granted in this instance. This proposal is also referenced in the public notices where it states that this application was accompanied by a Section 47 agreement *to prevent the implementation of a previously residential dwelling on adjacent land in the ownership of the applicant (Reg. Ref.: D12/0332)*. However, no such actual agreement or other relevant legal undertakings appear to have accompanied the application. Rather it would appear that this was a statement of intent which is acceptable in terms of the assessment of same from a planning perspective as such an agreement can be dealt with by way of a condition where considered appropriate and where agreed by all parties.

7.5.3. In line with the requirement of the Development Plan any grant of permission at this location would require the applicant to enter into an agreement under Section 47 of the Planning and Development Act 2000, as amended, restricting occupation of the dwelling for a period of 7 years to the applicant, or to other such persons as agreed by the Planning Authority. This requirement is considered reasonable and would be recommended should permission be granted in this case. However, the use of a Section 47 agreement to effectively sterilise an extant planning permission requires agreement and buy-in from both the applicant and the Planning Authority. In this regard I refer to Section 47 of the Planning and Development Act 2000 (as amended) that set out inter alia the following:

Section 47 - Agreements regulating development or use of land.

- 1) *A planning authority **may** enter into an agreement with **any person interested in land** in their area, for the purpose of restricting or regulating the development or use of the land, either permanently or during such period as may be specified by the agreement. (emphasis added)*

- 7.5.4. As pointed out by the Planning Authority the site for the dwelling approved under Reg Ref D12A/0336 and extended under Reg Ref D12A/0334/E is included within the blue line of lands in the ownership of the Equestrian Centre / O’Leary family. However, it is not within the red line boundary of the appeal site. This, raises concerns regarding the applicants “interest” in the land with the extant permission which in turn raises concerns regarding any certainty in the actual execution of the proposed Section 47.
- 7.5.5. Further, Section 47 of the Act (as amended) is very clear in that the Planning Authority “may” enter into agreement with any person interested in the land. DLRCC have made no comment or commitment regarding their views on the proposed Section 47 in their response to the appeal. However, the Case Planner in their report states that *the Planning Authority does not accept this proposal to replace one existing permission in the applicant’s name with the current permission*. The notification of decision to refuse permission reflects this position.
- 7.5.6. While I consider the applicants proposal to enter into a Section 47 agreement to overcome the difficulties in this case to be reasonable and acceptable in principle, in the absence of suitable evidence pertaining to their legal interest in the site with the extant planning permission together with agreement from DLRCC I cannot support the proposal as presented. Refusal is recommended.

7.6. **Appropriate Assessment**

- 7.6.1. Having regard to the nature and scale of the proposed development and its distance to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

7.7. **Other Issues**

- 7.7.1. **Development Contributions** – Dun-laoghaire Rathdown County Council has adopted a Development Contribution Scheme under Section 48 of the Planning and Development Act 2000 (as amended) and is in place since 14th December 2015. The proposed development does not fall under the exemptions listed in the scheme and it is therefore recommended that should the Board be minded to grant permission that a suitably worded condition be attached requiring the payment of a Section 48

Development Contribution in accordance with the Planning and Development Act 2000.

8.0 Recommendation

8.1. It is recommended that permission be **REFUSED** subject to the reasons and considerations set out below

9.0 Reasons and Considerations

1) Having regard to the location of the site within in an area zoned 'High Amenity Zoning Objective G'; where the objective is to protect and improve high amenity areas' under the County Development Plan 2016-2022 and where housing is restricted to persons demonstrating local need in accordance with Policy RES 16 Management of One off Housing, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Development Plan for a house at this location as the applicant already has an extant planning permission to build a dwelling house (Reg Ref D12A/0332 & Reg Ref D12A/0332E refers) where permission has been extended to 2nd April 2023 within the overall family landholding. To permit the proposed development would conflict with the requirements for rural housing in 'High Amenity Zoning 'G' land as outlined under Policy RES 16 of the County Development Plan 2016-2022 and would be contrary to the proper planning and sustainable development of the area.

Mary Crowley

Senior Planning Inspector

24th March 2020