



An  
Bord  
Pleanála

## Inspector's Report

### ABP-306896-20

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<b>Development</b>	Dwelling house, wastewater treatment system and associated site development works
<b>Location</b>	Mullagharlin Road, Mullagharlin, Dundalk, Co Louth
<b>Planning Authority</b>	Louth County Council
<b>Planning Authority Reg. Ref.</b>	191104
<b>Applicant(s)</b>	Keith Ui Chonghaile
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse Permission (3 no. reasons)
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Keith Ui Chonghaile
<b>Date of Site Inspection</b>	26/05/2020
<b>Inspector</b>	Conor McGrath

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## **1.0 Site Location and Description**

- 1.1. The appeal site is located at Mullagharlin on the southwestern side of Dundalk, just south of the N52 / link road between Dundalk and the M1, at junction 16. The site, with an area of 0.24ha, comprises the side garden of an existing two-storey detached dwelling. The site is bounded by mature trees and vegetation and there are currently limited views into the site.
- 1.2. Access to the site is from Mullagharlin Road / L7164 to the northwest. The road network in the surrounding area has been significantly modified in recent years arising from construction of the motorway and to provide for enterprise and employment uses on the adjoining lands. A new / upgraded road from a roundabout on the N52 provides access south to these lands and to Mullagharlin Road, which is now a cul-de-sac.

## **2.0 Proposed Development**

- 2.1. The proposed development comprises the construction of a two-storey detached dwelling (286-sq.m.) and wastewater treatment plant on the site. There is a public mains water connection available to serve the development. Surface water is to be disposed of on-site. A new entrance is to be provided from Mullagharlin Road, approx. 20m east of the junction with the north-south road to the west.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to refuse permission for the proposed development for three reasons as follows:

1. The subject site is located on lands zoned "Employment Mixed Use" [EM] by the Dundalk and Environs Plan 2009-2015 (Operative Plan). It is the zoning objective within this zone to provide for employment and supporting uses.

Residential development such as the type proposed is not a permitted use and as such, the proposed development is in conflict with the underlying zoning objective for the area. Accordingly, it is considered that the proposed development would contravene materially the policy of the Dundalk and Environs Plan 2009-2015 and would be contrary to the proper planning and sustainable development of the area.

2. The proposed development is located within the Mullagharlin Framework Plan 2008. It is the policy (EC4) of the Dundalk and Environs Plan 2009-2015 to implement the objectives and policies contained in the Framework Plan in order to create a business park of international quality and global appeal that will enable Dundalk to compete in the global market for business investment. It is considered that the proposed development would conflict with this policy objective and mitigate against the development of these fully serviced lands for their intended use.
3. The entrance to the proposed development is located on the local road (L7164). The applicant has failed to demonstrate to the satisfaction of the planning authority that adequate sightlines are available at this location and as such it is considered that the proposed development would endanger public safety by reason of a traffic hazard and obstruction of other road users.

### **3.2. Planning Authority Reports**

- 3.2.1. Planning Reports: Permission should be refused on the basis of contravention of the zoning of the lands in the Development Plan and the policies and objectives of the Mullagharlin Framework Plan. Any dwellings in the vicinity were granted prior to the implementation of the Development Plan and Framework Plan.
- 3.2.2. Other Technical Reports
  - Environmental Compliance: Adequate information was submitted to satisfy the section that there will be no threat of environmental pollution. Conditions recommended.

- Infrastructure: Further information recommended regarding achievement of adequate sightlines at the proposed entrance. Details are required of tree removal to provide the new entrance.

### 3.3. Prescribed Bodies

- Irish Water: No objection

## 4.0 Planning History

88/488: Outline permission for two houses sought on the appeal site and the adjoining site to the east. Permission was granted for one dwelling on the site.

89/591: Approval granted to Jim Connolly for the adjoining dwelling to the east.

94/61: Outline permission refused to Jim Connolly for a dwelling on the subject site.

94/618: Outline permission sought by Jim and Alice Connolly for a dwelling on the subject site. Further information requested.

19/638: Permission for a new wastewater treatment system granted to Alice Connolly on the adjoining site to the east.

## 5.0 Policy Context

### 5.1. Development Plan

#### **Dundalk & Environs Development Plan 2009-2015**

The appeal site is zoned EM Employment Mixed Use: To provide for employment and supporting uses. Residential development is identified as not permissible within this land use zone.

Section 2.2 Spatial Strategy notes that a number of framework / master plans have already been prepared and the provisions of these plans are incorporated as guidelines into the overall development strategy for the plan area (including the

Mullagharlin Framework Plan.) If any conflict arises between the provisions of any of the existing plans, the development plan will at all times take precedence.

Section 3.2.5 notes the vision of the Mullagharlin Framework Plan and Policy EC 4 seeks to implement the objectives and policies contained within the Framework Plan in order to create a business park of international quality and global appeal that will enable Dundalk to compete in the global market for business investment.

## 5.2. Mullagharlin Framework Plan - February 2008

The vision set out in section 1.2 seeks to enhance and capitalise on Dundalk's strategic location and its many assets by transforming the land adjoining the Southern Link Road into a business park of international quality and global appeal that will enable the Dundalk region to compete within the global marketplace for business investment.

Section 1.3 notes that the guidance provided is not intended to be overly prescriptive or rigidly enforced. Rather, the plan has been designed to be flexible and responsive so that creativity and innovation is encouraged in the design process, so long as it does not compromise the overall vision for the Framework Plan area.

### Strategic Policies

PP1 Development within the plan area will be expected to comply with the objectives of the framework plan and not to compromise or diminish its overall integrity and implementation.

PP2 Permissible land uses, i.e. those that contribute towards achieving a business park of international appeal attractive to global investors are encouraged within the Framework area. Land uses that would compromise and/or diminish the integrity of the overall Framework will not be permitted.....

4.3.2 General Policies are provided to ensure that the overall integrity of the framework plan is not diminished by inappropriate development.

G01 The Plan area will be developed in general accordance with the Framework Plan Drawing No.3 and the subsequent development policies and controls.

The site-specific objective for the Mullagharlin West Character Area is to create a high quality industrial, business employment, research and development employment zone set in a high-quality landscape setting that is serviced by a fast and efficient public transport system.

Objective S12 New buildings in this area shall be sympathetic to existing development, particularly established residential properties. The massing, volume and height of new development should be sensitive to the amenities of established properties within this area.

### **5.3. Natural Heritage Designations**

The site is not designated for any nature conservation purposes. The closest conservation sites are Dundalk Bay SAC (000455 ) and SPA (004026) approx. 2.5km east of the appeal site.

### **5.4. EIA Screening**

Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity / the absence of any direction connections to any sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

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

Keith Ui Chonghaile makes the following points in the appeal against the decision of the planning authority to refuse permission for the proposed development:

- The site comprises the side garden of the applicant's family dwelling and the applicant wishes to continue to reside in this semi-rural area.
- The development does not materially contravene the zoning on the basis that:

- The established residential use of the lands, predates adoption of the development plan and the Framework Plan.
- Permission was granted for a new wastewater treatment system serving the adjoining dwelling, as well as development in neighbouring residences, without objection on the basis of zoning.
- The inappropriate zoning for employment use arises from a mapping error, which is not proper in the context of the character of the area.
- The site is not appropriate or available for employment related uses.
- The proposal is consistent with the pattern of development along Mullagharlin Road and raises no issues of design or visual impact.
- There is no material effect on the delivery of employment generation.
- The development would not set an undesirable precedent for other development.
- The Framework Plan states that it is to be applied flexibly and responsively which is not reflected on the decision of the planning authority.
- Development of the nature and scale proposed would not impact on the achievement of the objectives of the Framework Plan and refusal reason no. 2 is not justified.
- Revised access arrangements are submitted for consideration by the Board in accordance with the recommendations of the Council Infrastructure section.
- These revisions do not impact on third party lands and boundary treatment may be subject to condition.

## 6.2. Planning Authority Response

In response to the first party appeal, the planning authority make the following comments:

- Residential use is not permissible on EM lands and is a clear contravention of development plan policy.
- The zoning is not a mapping error and it was intended to provide for the development of these serviced lands as a business park.



- The development would prejudice the comprehensive and cohesive development of the lands.
- Residential use is not compatible with the zoning on the basis of noise, traffic, light pollution etc.
- The development would set an undesirable precedent for similar development within the Framework Plan area.
- The surrounding pattern of development is predominantly employment mixed use and not residential.
- Residential development to the east was granted permission in the 80's.
- Refusal reason no. 3 was appropriate based on the documentation submitted.

## 7.0 **Assessment**

7.1. It is proposed to consider the development under the following broad headings:

- Land use and development principle
- Roads and access
- Public Health

### 7.2. **Land use and Development Principle**

- 7.2.1. The appeal site is located within an area zoned Employment and Mixed Uses wherein residential use is not a permissible use. The development would not constitute an existing non-conforming use and in this regard the development would materially contravene the lands use zoning objectives of the development plan.
- 7.2.2. With regard to the argument that the zoning of the site for such uses is an error, I note the submission of the planning authority to the contrary and to the specific zoning of established residential lands to the west for residential purposes. There does not appear to be any basis to determine a mapping error in this regard.
- 7.2.3. I note the provisions of the Framework Plan for the area and consider that further extension of residential uses at this location would not be compatible with the employment use of these lands and would present a risk to the achievement of the land use objectives therefor.

7.2.4. Reason no. 1 of the planning authority decision states that the development would materially contravene the zoning objective of the site. S.37(2)(a) of the 2000 Act, as amended, states that the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.

7.2.5. S.37(2)(b) states that where a 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 accordance with paragraph (a) where it considers that—

- (i) The proposed development is of strategic or national importance,
- (ii) There are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or
- (iii) Permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28 , policy directives under section 29 , the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or
- (iv) Permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.

7.2.6. Having regard these matters, I would comment as follows:

- (i) The proposed development is not of strategic or national importance,
- (ii) The objectives of the development plan are clearly stated,
- (iii) There are no guidelines, policy directives or other policy considerations which indicate that permission for the proposed development should be granted in this instance,
- (iv) Since the making of the current development plan, there has not been an expansion of residential development in this location. There has however, been a number of permissions granted for science and technology development on lands to the south. The pattern of development in the area

does not indicate that there is sufficient basis to warrant a grant of permission in this case.

Having regard to the foregoing, I do not consider that there is scope under S.37(2)(b) for the Board to consider a grant of permission for the proposed development in this case.

### **7.3. Roads and Access**

- 7.3.1. The site is located on the original local road serving this area, Mullagharlin Road. The road network has substantially altered in recent years and access is now provided from the N52 via the north-south link road to the west. The 50kph urban speed limit applies at this location. This local road serves a limited amount of development which would not be increased under the provisions of the Framework Plan. Having regard to the low traffic volumes and prevailing speed limit, the planning authority sightline requirement of 75m is regarded as excessive. I note that DMURS recommends the adoption of a Stopping Sight Distance of 45m for a 50kph design speed.
- 7.3.2. Adequate sightlines in an easterly direction are achievable at the proposed site entrance but are constrained in a westerly direction by proximity to the adjoining junction. A revised layout plan is submitted with the appeal which increases separation from the junction to provide sightlines of 30m, however, I note that the revised plan does not identify the footpath layout along the site frontage. While such sightlines would remain deficient, I note that further increase could be achieved by the provision of a combined entrance with the adjoining dwelling to the east. This dwelling is stated to be in family ownership. Having regard to the prevailing traffic speeds and low traffic volumes along this road, such an arrangement may be regarded as acceptable in this case, however, having regard to the substantive reasons for refusal above, I do not recommend that revisions in this regard be pursued.

### **7.4. Public Health**

7.5. The application was accompanied by a site characterisation report. The site overlies a Poor Aquifer - Bedrock which is Generally Unproductive except for Local Zones. Ground water vulnerability is High and the groundwater protection response is R1. Trial holes to 2.3m depth did not encounter bedrock or the watertable and at time of site inspection, the trial holes on the site were dry. Reported T-values of 33min are within the acceptable range and the proposal is to install a proprietary treatment system on the site. Having regard to the characteristics of the site and the results of the site characterisation tests, the proposed development would not appear to give rise to a risk to public health.

## 8.0 **Appropriate Assessment Screening**

8.1. The closest European sites are to the appeal site are Dundalk Bay SAC (000455 ) and SPA (004026) approx. 2.5km east of the appeal site. The site comprises a domestic side garden and the scale of development proposed is not significant. There are no other European sites within the zone of influence of the proposed development. The site character assessment indicates that the site is suitable for the on-site disposal of effluent and there are no connections between the appeal site and these European sites.

8.2. Having regard to the nature and scale of development, it is reasonable to conclude that 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 European Site No. 000455 or 004026, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment (and submission of a NIS) is not therefore required.

## 9.0 **Recommendation**

9.1. That the decision of the planning authority be upheld that that permission be refused for the reasons and considerations set out below.

## 10.0 Reasons and Considerations

The site of the proposed development is located on lands zoned “Employment Mixed Use” [EM] under the Dundalk and Environs Plan 2009-2015 which is the operative plan for this area. It is the objective to provide for employment and supporting uses within this zone and residential development is not a permitted use. Furthermore, the site is located within the area of the Mullagharlin Framework Plan 2008 which seeks to create a business park of international quality and appeal. It is policy of the Framework plan that land uses which would compromise this vision will not be permitted.

The proposed development is in conflict with the underlying zoning objective for the area and would compromise the achievement of the objectives of the Framework Plan. Accordingly, it is considered that the proposed development would contravene materially the policies and objectives of the Development Plan for the area and would therefore be contrary to the proper planning and sustainable development of the area.

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Conor McGrath  
Senior Planning Inspector

10/06/2020