



An
Bord
Pleanála

Inspector's Report ABP 308910-20

Development	House, effluent treatment system and ancillary works.
Location	Athgoe North, Newcastle, Co. Dublin
Planning Authority	South Dublin County Council
Planning Authority Reg. Ref.	SD20A/0245
Applicants	John Kenny & Alienor Conlon Kenny
Type of Application	Permission
Planning Authority Decision	Refuse
Type of Appeal	1 st Party v. Refusal
Appellants	John Kenny & Alienor Conlon Kenny
Observer(s)	None
Date of Site Inspection	15/05/21
Inspector	Pauline Fitzpatrick

1.0 Site Location and Description

The site, which has a stated area of 0.6 hectares, constitutes part of a larger field currently in agricultural use accessed from local road L6056 referred to as Smith's Hill Road in the townland of Athgoe North. It is c. 1km southwest of Newcastle town village and c. 1.2 km east of the border with County Kildare. One off housing is evident along the local road network in the area.

The field is relatively level. It is subdivided by post and tape fencing with timber fencing to the properties to east and west. The roadside and rear field boundaries are delineated by hedgerows. There is an existing vehicular gated entrance in the south-eastern most corner. Access to the field is also available via a track from the north-east.

2.0 Proposed Development

Permission is sought for a dormer dwelling with a stated area of 315 sq.m. to be served by an effluent treatment system. The existing access is to be widened.

A detailed supporting statement accompanies the application setting out the applicants' case in terms of compliance with the settlement location policy and how they meet the exceptional circumstances as set out in the South Dublin County Development Plan.

The applicants are from the area and reside with one of their parents. Mr. Kenny works part time on a local farm and runs his own business based in Citywest which, it is stated, could easily be run from another location. Mrs. Kenny is a full time carer. Their son has special needs.

The site characterisation form recorded a depth of 0.7 metres to bedrock in the trial hole. T and P values of 25 and 23.97 respectively were calculated.

3.0 Planning Authority Decision

3.1. Decision

Refuse permission for 6 reasons which can be summarised as follows:

1. The applicants have not provided adequate evidence of exceptional circumstances that require them to live in this area. The proposal contravenes the RU zoning objective for the area.
2. Taken with existing development the proposal would contribute to excessive development in a rural area lacking certain public services and community facilities served by a substandard road network. It would materially contravene development plan objectives and lead to uneconomic demands for the provision of further public services and facilities.
3. The proposal would represent proliferation of further one off housing in the Dublin Metropolitan Area and could prejudice the achievement of the regional settlement strategy policy for the Eastern and Midlands Region.
4. The proposal could prejudice the achievement of regional policy objectives contained in the Dublin Metropolitan Area Spatial Plan in terms of sustainable travel patterns.
5. The applicants have not provided sufficient justification for the location of dwelling in the Athgoe and Saggart Hills Landscape Area. Would create ribbon development contrary to Policy H27 and would materially contravene the zoning objective for the area.
6. The proposal is located on a rural road which is narrow in width with poor vertical and horizontal alignment lacking pedestrian, public lighting and drainage facilities. It would endanger public safety by reason of traffic hazard.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report in the Record of Executive Business and Chief Executive's Order can be summarised as follows:

- The applicants have demonstrated close family ties to the area. They have not demonstrated a need to reside in the area based on their employment. They have not adequately demonstrated how their current housing needs cannot be facilitated in the current dwelling they reside in on the family landholding.

- Whilst the close family ties are acknowledged it is not considered that they have demonstrated sufficient justification that would warrant the setting aside of Policy H20.
- Taken in conjunction with existing residential development in the area the proposal would contribute to excessive development in a rural area lacking certain public services and community facilities served by a substandard road network. The proposal would materially contravene the objectives of the development plan and would lead to demands for uneconomic provision of further services and facilities in this rural area.
- The RSES settlement strategy specifies that new development should be directed into built up areas.
- The proposal would result in ribbon development. The applicants have not provided a landscape or visual assessment.

A refusal of permission for 6 reasons is recommended.

3.2.2. Other Technical Reports

Parks and Landscape Services/Public Realm sets out conditions to protect the hedgerows and for site landscaping.

Roads Department recommends refusal on the grounds that the development will lead to increased traffic hazard at this location. It is a legacy road and has a substandard design. The horizontal alignment is poor. There are few natural passing points from the site to the junction of the L6001 public road. It also has a 3 tonne weight restriction.

Note: reference is made in the Planner's report to consultations with Environmental Health, Irish Water and Water Services. The former 2 no. stated to have no objection with the latter seeking further information. No reports from same on file.

3.3. Prescribed Bodies

None

3.4. Third Party Observations

Letters of support for the proposed development received by the planning authority are on file for the Board's information.

4.0 Planning History

As per the details provided in the Planner's report the applicants have previously been refused permission for a dwelling at this location under refs. SD18A/0127 and SD 19A/0155.

5.0 Policy Context

5.1. National Policy

5.1.1. National Planning Framework

Policy Objective 15: Support the sustainable development of rural areas by encouraging growth and arresting decline in areas that have experienced low population growth or decline in recent decades and by managing the growth of areas that are under strong urban influence to avoid over-development, while sustaining vibrant rural communities.

Policy Objective 19: Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- In rural areas under urban influence, 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 and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements;
- In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.1.2. **Sustainable Rural Housing Guidelines for Planning Authorities**

The Guidelines refer to persons considered as constituting those with rural generated housing needs being persons who are an intrinsic part of the rural community or working full-time or part-time in rural areas. The Guidelines refer to persons who are an intrinsic part of the community as having 'spent substantial periods of their lives, living in rural areas as members of the established rural community. Examples would include farmers, their sons and daughters and or any persons taking over the ownership and running of farms, as well as people who have lived most of their lives in rural areas and are building their first homes'.

5.2. **Regional Policy**

5.2.1. **Eastern & Midland Regional Spatial & Economic Strategy 2019-2031**

RPO 4.80: Local authorities shall manage urban generated growth in Rural Areas Under Strong Urban Influence (i.e. the commuter catchment of Dublin, large towns and centres of employment) and Stronger Rural Areas by ensuring that in these areas the provision of single houses in the open countryside is based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

5.3. **Local Policy**

South Dublin County Development Plan 2016-2022

The site is within an area zoned Rural 'RU' the objective for which is to protect and improve rural amenity and to provide for the development of agriculture. Residential development is open for consideration.

Section 2.5.0 refers to Rural Housing. The Plan states that it is the policy of the Council to restrict the spread of dwellings into rural and high amenity areas.

Policy H20 - Management of Single Dwellings in Rural Areas

Restrict the spread of dwellings in the rural 'RU', Dublin Mountain 'HA-DM', Liffey Valley 'HA-LV' and Dodder Valley 'HA-DV' zones and to focus such housing into existing settlements.

Policy H21: Rural Housing Policies and Local Need Criteria

It is the policy of the Council that in accordance with the Sustainable Rural Housing Guidelines DEHLG (2005) and Circular SP 5/08 Rural Housing Policies and Local Need Criteria in Development Plans: Conformity with Articles 43 and 56 (Freedom of Establishment and Free Movement of Capital) of the European Community Treaty, "persons who are an intrinsic part of the rural community" or "persons working full-time or part-time in rural areas" as described under Section 3.2.3 (Rural generated housing) of the Sustainable Rural Housing Guidelines (2005) shall be favourably considered in relation to rural housing.

Policy H22 - Rural Housing in RU zone

It is the policy of the Council that within areas designated with Zoning Objective 'RU' (to protect and improve rural amenity and to provide for the development of agriculture) new or replacement dwellings will only be permitted in exceptional circumstances.

H22 Objective - To consider new or replacement dwellings within areas designated with Zoning Objective "RU" (to protect and improve rural amenity and to provide for the development of agriculture) where:

- The applicant can establish a genuine need to reside in proximity to their employment (such employment being related to the rural community) OR
- The applicant has close family ties with the rural community.

Policy H27 Rural House & Extension Design:

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 'RU'.....: (inter alia)

- 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.....
- Would not create or exacerbate ribbon or haphazard forms of development.

The site is within area designated as Athgoe and Saggart Hills Landscape Character Area.

HCL7 policy - 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.

5.4. Natural Heritage Designations

The nearest designated site is Rye Water Valley/ Carton SAC (site code 001398) is c.8 km to the northeast

5.5. Environmental Impact Assessment

Having regard to the nature and scale of the proposed development, there is no real likelihood of significant effects on the environment. 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

The 1st party appeal against the planning authority's notification of decision to refuse permission can be summarised as follows:

- The applicants are from the area and continue to live in the local rural community.
- One of the applicants works part time on a local farm and keeps bees.
- Their children have been born into and raised in the local community.
- They meet the definition of rural generated housing need as defined in the Rural Housing Guidelines
- The Development Plan does not define what constitutes exceptional circumstances nor are there any examples given.
- As per the Oxford English Dictionary exceptional is defined as 'unusual' or 'atypical'. They consider that they have several unusual or atypical circumstances including:
 - Family ties to the area,
 - Applicant working on a local farm and involvement in beekeeping which improves agricultural viability in the vicinity,
 - Care required for their son who has special needs and reliance on support of family in the local area. The house has been designed to meet his requirements with the ground floor designed as to be able to provide for elderly relatives in the future.
- The planning authority has been over zealous in terms of its policy to restrict the spread of dwellings into rural areas. Only 5 houses have been granted permission in the 1st four years of the Development Plan which allows for 100 new homes.
- A grant of permission would not prejudice the targets of MASP.
- Housing within existing settlements would not meet their son's needs.

- The site has not been used for food production and is used occasionally for horses.
- The site is over 3km away from the nearest proposed greenway on the Grand Canal and 1.4km from the nearest cycleway in Newcastle village and will have no impact on same.
- The proposal should not be considered as ribbon development. It would not lead to the creation of 5 or more houses along a given 250 metres of road. Several of the houses located close to the site should not be considered road frontage style development. They retain the traditional, original agricultural style roadside hedging and the view from the road is of continuous high hedging, not of developed road frontages.
- It is not infill as fields owned by other members of the family will remain to either side.
- Ribbon development also depends on the circumstances of the applicant. The applicants have demonstrated exceptional circumstances.
- The proposal will not lead to any additional traffic as they already live on the road c. 200 metres away. Sightlines are good. There will be a small increase during construction. Construction traffic will use the rear access to the site.

6.2. Planning Authority Response

The issues raised in the appeal have been covered in the planner's report.

6.3. Observations

None

7.0 Assessment

I consider that the issues arising in the case can be assessed under the following headings:

- Compliance with Settlement Location Policy
- Landscape and Rural Amenity
- Access and Traffic
- Other Issues
- Appropriate Assessment – Screening

7.1. Compliance with Settlement Location Policy

I consider that the planning authority's 1st, 2nd, 3rd, 4th and 5th reasons for refusal are interrelated in terms of reference to regional and local settlement location policies.

The site is within an area zoned Rural 'RU', the objective for which is to protect and improve rural amenity and to provide for the development of agriculture with policies H21 and H22 allowing for dwellings in such zones to be permitted only in exceptional circumstances where the applicant can establish a genuine need to reside in proximity to their employment (such employment being related to the rural community) or has close family ties with the rural community. This is further reinforced by policy 20 which seeks to restrict the spread of dwellings in the rural 'RU', Dublin Mountain 'HA-DM', Liffey Valley 'HA-LV' and Dodder Valley 'HA-DV' zones and to focus such housing into existing settlements. Specific regard is had to the Rural Housing Guidelines in policy H21 as to whom shall be favourably considered in relation to rural housing.

As to what the development plan intends by exceptional circumstances is unclear with no definition given.

In view of the site's location in relative proximity to Dublin City and the large employment areas of both South Dublin and North Kildare there is no question that the rural area can be identified as being under strong urban influence with its obvious attractiveness in terms of urban generated housing demand. In that context the Regional Economic and Spatial Strategy objective RPO 4.80 is applicable requiring that the provision of single houses in the open countryside

should be based on the core consideration of demonstrable economic or social need to live in a rural area, and compliance with statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements. This objective follows from National Planning Framework National Policy Objective 16 which seeks to support the sustainable development of rural areas by managing the growth of areas that are under strong urban influence to avoid over development whilst facilitating the provision of single housing based on the core consideration of demonstrable economic or social need to live in a rural area, having regard to the siting and design criteria for rural housing in statutory guidelines and plans and to the viability of smaller towns and rural settlements.

The applicants have submitted a substantial amount of detail setting out their connection to this rural area and how they qualify in terms of exceptional circumstances. The veracity of the documentation is not disputed and it is accepted that they are from and have close ties to the area. They reside in Mrs. Conlon Kenny's family home. Mr. Kenny is stated to assist on a farm on a part time basis and keeps bees on the site, however I note that his place of employment is stated to be Citywest. Mrs. Conlon Kenny is a full time carer. Their son has a special needs and it is stated that a dwelling within an urban area would be not appropriate for his needs.

In view of the pattern of development in the area to date and to the above national, regional and local policy provisions, I submit that a high bar must be set in terms of demonstrating an applicant's need to have a house at this location based on genuine economic and/or social need so as to ensure the responsible management of the land resource in an area under pressure from one off housing. The fact that one of the applicants assists part time on a farm and keeps bees cannot be considered as constituting an economic imperative to justify a dwelling at this location. Whilst I empathise with the applicants' circumstances in terms of the care requirements for their son the current Development Plan which, as noted above, has regard to the provisions of the Rural Housing Guidelines, does not provide for such considerations. To state that a dwelling in an urban area would not meet the requirements is not sufficient in justifying a dwelling at this location. I note that Newcastle village is in close proximity, c.1km to the north.

I submit that whilst the applicants' family ties and connections to the area are accepted, I do not consider that they have demonstrated exceptional circumstances as required by the current development plan. On the basis of the information on the file it cannot reasonably be concluded that there can be any entitlement bestowed on the applicants for a house on this site based on such economic or social imperative. I submit that the proposed development, in the absence of any definable or demonstrable based need for a house in this rural area, would exacerbate and consolidate the pattern of haphazard rural housing which, in itself, would lead to an erosion of the rural and landscape character of this area. I therefore recommend a refusal of permission on this basis.

7.2. Landscape and Rural Amenity

The site is within the Athgoe and Saggart Hills Landscape character area which is designated as having medium to high landscape sensitivity. There are no views or prospects listed for protection in the vicinity.

The site itself is relatively level with hedgerows to the roadside and rear boundaries. A dormer dwelling of standard design is proposed with a ridge height of 6.716 metres. Subject to appropriate landscaping I consider that the dwelling can be satisfactorily assimilated into the site and would not detract from the visual amenities of the area.

One off housing along the local road serving the site is noted with the nearest being c.68 metres to the west and c.80 metres to the east with a further 3 no. dwellings further east again. Having regard to Appendix 4 of the Rural Housing Guidelines I would concur with the appellants' position that the development does result in ribbon development as it does not cause or result in five or more houses on one side of a given 250 metre stretch of road frontage.

I therefore would not concur with the substance of the planning authority's 5th reason for refusal.

7.3. Access and Traffic

Whilst the local road serving the site is narrow it was noted to be relatively lightly trafficked with existing entrances providing informal lay-bys allowing for passing vehicles. The 80 kph speed limit applies.

It is proposed to use and improve the existing field entrance with adequate sightlines in each direction. Whilst the proposal would give rise to an intensification of use of the existing entrance the vehicular movements that would arise from the proposed dwelling would be relatively low and could be accommodated on the road.

On this basis I do not concur with the planning authority reason for refusal in this regard.

7.4. Other Issues

The planning authority's fourth reason for refusal makes reference to the Dublin Metropolitan Area Spatial Plan which forms part of the Regional Economic and Spatial Strategy for the Eastern and Midland Region and the promotion of greenway infrastructure and cycle ways. I would concur with the appellants that the proposed development, at such a remove from such planned and proposed infrastructure would not prejudice their realisation. It maybe that the planning authority in the reason for refusal was more appropriately referring to the fact that the proposal, in an area not served by public transport or cycle facilities, will be car dependent which would be at variance with the high level policies in terms of promoting sustainable travel patterns.

Sufficient detail has been provided to conclude that the site can accommodate an effluent treatment system.

7.5. Appropriate Assessment

Having regard to the nature and scale of the development and to the nature of the receiving environment, remote from any European site and with no hydrological links either within or adjacent to the site boundaries to any European site, no appropriate assessment issues arise and it is not considered that the 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

Having regard to the foregoing I recommend that permission for the above described development be refused for the following reasons and considerations.

9.0 Reasons and Considerations

Having regard to the location of the site within an zoned RU in the current County Development Plan where policy Objective H22 restricts new or replacement dwellings on the basis of a genuine rural generated housing need and evidence of exceptional circumstances and, 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, objective RPO 4.80 of the Eastern and Midland Regional Spatial and Economic Strategy and National Policy Objective 19 of the National Planning Framework, which seek to manage the growth of areas that are under strong urban influence to avoid over-development and to ensure that the provision of single housing in rural areas under urban influence are provided based upon demonstrable economic or social need to live in a rural area, it is considered that the applicants have not demonstrated exceptional circumstances which would justify the grant of planning permission for a dwelling at this rural location as required by Policy H22 Objective 1 of the County Development Plan and, therefore, would not be in accordance with National Policy Objective 19 or Regional Spatial and Economic Strategy Objective RPO 4.80. The proposed development, in the absence of a demonstrable economic or social need for the house, 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, be contrary to the proper planning and sustainable development of the area.

Pauline Fitzpatrick
Senior Planning Inspector

May, 2021