



An  
Bord  
Pleanála

## Inspector's Report ABP309077-21

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<b>Development</b>	House and garage.
<b>Location</b>	Ballyedmonduff Road, Stepside, County Dublin.
<b>Planning Authority</b>	Dun Laoghaire Rathdown County Council
<b>Planning Authority Reg. Ref.</b>	D20A/0390
<b>Applicant(s)</b>	Eoin Norton.
<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>	Eoin Norton
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	4 <sup>th</sup> June 2021.
<b>Inspector</b>	Hugh Mannion.

## **1.0 Site Location and Description**

1.1. The application site has a stated area of 0.6231ha and is located off Ballyedmunduff Road, near Stepside, County Dublin. The site entrance is an existing agricultural gateway, from the roadside the access road drops sharply down and is an unmetalled track from the roadside entrance to the application site. There is good screening along (stone walls, banks with hedges and tree cover) both sides of the public road but this dissipates as the site access track moves south towards the application site. The area is generally hilly and rural in character where there is a pattern of single houses on individual sites with access to the public road. To the west is rising ground towards Two Rock Mountain and the Dublin/Wicklow mountains and to the east is Stepside, Kilternan and then the M50. The road network is heavily trafficked relating to residential and smaller commercial uses. There is some hill farming and a good deal of car-based tourist sightseeing and leisure cycling. Near the site there are no footpaths/public lighting or cycle paths. There is a solid white median line west and south from the junction with Stepside Lane to the east of the site entrance.

## **2.0 Proposed Development**

2.1. The proposed development comprises the erection of a house with wastewater treatment system on a site off the Ballyedmomduff Road, Stepside, County Dublin.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

Refuse permission.

1. It is the planning authority's policy to restrict the spread of one-off housing in the rural countryside in areas under strong urban influence in accordance with objective RES16 of the Development Plan. The applicant has not demonstrated a genuine need for housing in the area and the proposed development would therefore contravene the development plan policy in relation to rural housing.

2. The proposed development would be highly visible in the landscape and from Enniskerry Road and Ballyedmonduff Road in a manner to contravene County Development Plan policy in relation to the protection of views and prospects.

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

#### 3.2.1. Planning Reports

3.2.2. The initial planner's report recommended requesting additional information in relation to;

- The extent of his farming activity
- Is pig farming his primary occupation.
- There may be an existing building on site and the applicant should clarify its use.
- The site may impact on protected views. A visual impact assessment should be submitted.
- Granite features at the site entrance and along the access should be assessed for their heritage value.

#### 3.2.3. Other Technical Reports

**Drainage Division** reported no objection subject to conditions relating to the disposal of surface water on site.

**Environmental Health Officer** reported that the proposed development is acceptable subject to conditions.

**Transport Planning** reported no objection.

## 4.0 **Planning History**

No relevant planning history for the site.

## 5.0 Policy and Context

### 5.1. National Planning Framework

#### 5.2. 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.

5.3. **The Sustainable Rural Housing Guidelines** (DOEHLG 2005) require planning authorities in addressing demand for rural housing to distinguish between rural generated housing need and urban generated housing need. Rural generated housing needs should, generally, arise from demonstrable connections to the site, to rural based occupations and/or relationship with the landowners. The Guidelines include an indicative map which distinguishes between rural area types. The application site is in an area designated as 'under strong urban influence' where the Guidelines have identified areas as being under pressure for housing development due to proximity to larger cities and towns.

#### 5.4. Development Plan

5.5. The Dun Laoghaire Rathdown County Development Plan 2016-2022 is the relevant county development plan for the area.

#### 5.6. Section 1.2.2.3.

The 'rural' footprint of Dún Laoghaire-Rathdown – i.e. the area covered by High Amenity and Rural Amenity Zoning objectives – is primarily concentrated in the

south-western quadrant of the County. The area generally comprises the foothills of the Dublin Mountains - including the upland plateau framing Carrickgollogan and Ballycorus. The proximity of the defined rural footprint immediately adjacent to the edge of the urban/ suburban mass of the County i.e. essentially east of Enniskerry Road - makes it an area very much 'under strong urban influence'. The broad policies and objectives of the 'Sustainable Rural Housing' – Guidelines for Planning Authorities' (2005) are fully recognised and embodied within the County Development Plan. The Development Plan advocates a robust rural settlement strategy aimed at controlling the spread of urban-generated 'one-off' housing into the spatially limited rural countryside of the County. It is also recognised, however, that there will be certain circumstances where limited one-off housing may be acceptable where it can be shown not to be urban generated, will not place excessive strain on services and infrastructure or have a serious negative impact on the landscape and where demand arises from locationally-specific employment or local social needs. The policy approach promoted in the Development Plan is considered to provide a reasonable balance between the delivery of appropriate and justifiable residential development in the rural parts of the County with the stated objective of protecting the unique character of the Dublin Mountain foothills and is, accordingly, broadly in line with Government guidance on the subject.

#### **Objective policy 2.1.4.1 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).

### **Policy LBHB2 Preservation of Landscape Character Areas.**

It is Council policy to continue to preserve and enhance the character of the County's landscapes in accordance with the recommended strategies as originally outlined in the Landscape Character Assessment (2002 and since updated), in accordance with the 'Draft Guidelines for Landscape and Landscape Assessment' (2000) as issued by the Department of Environment and Local Government, in accordance with the European Landscape Convention (Florence Convention) and in accordance with 'A National Landscape Strategy for Ireland – Strategy Issue Paper for Consultation' (2011). The Council shall implement any relevant recommendations contained in the Department of Arts, Heritage and the Gaeltacht's National Landscape Strategy for Ireland, 2015 – 2025

**Policy LHB6** It is Council policy to protect and encourage the enjoyment of views and prospects of special amenity value or special interests.

The site is zoned B "to protect and improve rural amenity and to provide for the development of agriculture". In relation to housing in Zone B the policy as set out in paragraph 8.2.3.6 is

"The Council's policy position in respect of the management of 'one-off' housing in the rural parts of the County is clearly set out under Policy RES16, Section 2.1.4.1. The Council generally seeks to protect the rural character of the countryside and foster sustainable development. In pursuance of these objectives the Council's position in relation to 'one-off' houses is essentially restrictive and precautionary. Development proposals will be evaluated in accordance with the following criteria: Within areas designated with zoning Objective 'G' - "To protect and improve high amenity areas", dwellings will only be permitted on suitable sites where the applicant can demonstrate to the satisfaction of the Planning Authority that:

- There is genuine requirement for housing in the area because their principal employment is in agriculture, hill farming or a local enterprise directly related to the area's amenity potential.
- 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.

Within areas designated with zoning Objective 'B' - "To protect and improve rural amenity and to provide for the development of agriculture", dwellings will only be permitted on suitable sites where:

- Applicants can establish to the satisfaction of the Planning Authority a genuine need to reside in proximity to their employment (such employment being related to the rural community), or
- Applicants can establish to the satisfaction of the Planning Authority a genuine need for an additional dwelling in the rural area and who are native to the area due to having spent substantial periods of their lives living in the area as members of the rural community and have close family ties with the rural community (in accordance with Section 3.2.3 'Rural Generated Housing' of the 'Sustainable Rural Housing Guidelines for Planning Authorities' 2005).

In addition to the above specific requirements in response to the varying degrees of protection afforded to the different rural zonings the Planning Authority will be obliged, under the provisions of Circular SP5/08, to subject appropriate applications – involving employment or the operation of a business – to the following considerations:

- That applicants will be required to satisfy the Planning Authority of their commitment to operate a full-time business from their proposed home in a rural area as part of their planning application (to discourage commuting to towns and cities).
- That applicants will be required to outline how their proposed business will contribute to and enhance the rural community.
- That applicants will be required to satisfy the Planning Authority that the nature of their employment or business is compatible with those specified in the local needs criteria for rural areas (in order to discourage applicants whose business is not location dependant e.g. telesales or telemarketing).

In all cases, the applicant shall submit the following details with Planning Applications for residential development within a rural area:

- A map showing all existing family owned properties and lands.
- A rationale as to why a particular site has been chosen for development.

- A strong justification in relation to the need for an additional dwelling in the rural area.
- A rationale clearly outlining why a family flat would not be suitable.
- Documentary evidence to show how the applicant complies with rural housing policy.
- A site suitability report in relation to wastewater treatment.

#### 5.7. Suitable Sites

- (i) The suitability of a rural site for any development will be evaluated according to the following criteria:
- The landscape must be suitable to accommodate the proposed development.
  - Acceptable visual impact of the development in relation the surrounding countryside and dwellings / structures / features in the vicinity.
  - The site must be capable of accommodating all proposed structures together with the required wastewater treatment system.
  - No other adverse impact on the environment.
  - Satisfactory capacity of the access road/lane serving the proposed site.
  - Adequate car parking and manoeuvring space on site and suitable vehicular access.
  - Satisfactory screening/shelter.
  - Protection of residential amenity were appropriate.
  - Satisfactory relationship to any nearby dwelling.
  - The adequacy of infrastructure to serve the proposed development.
  - No adverse impact on heritage items, sites and areas.

#### 5.8. Natural Heritage Designations

Not relevant.



## 5.9. EIA Screening

5.10. Having regard to the modest scale of the proposed development is not considered that it would give rise to likely significant impacts on the environment in a manner to require the submission of an EIAR and carrying out of EIA.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The site is zoned B in the County Development Plan where the plan states that rural housing may be acceptable where it is not urban generated. The applicant is actively engaged in free range pig farming. Evidence of this occupation and the applicant's relationship to the local area is included in the appeal.
- The applicant works parttime on other local farms.
- The applicant meets the criteria set out in sections 2.1.4.1 and section 8.2.3.6 of the plan, Objective 19 of the NPF and Section 3.2.3 of the Sustainable Rural Housing Guidelines.
- The criteria set out in Section 37(2)(b)(ii) and (iii) of the Planning and Development Act in relation to conflicting development plan objectives and where the application should be considered by reference to a section 28 guidelines.
- The application is similar to the circumstances of ABP307483.
- In relation to the second refusal reason the applicant submitted a visual impact assessment that demonstrated the absence of unacceptable visual impact.

### 6.2. Planning Authority Response

- The farming activity referenced in this application/appeal does not justify a separate house on site.

### 6.3. Observations

- None

## 7.0 Assessment

### 7.1. Rural Housing Policy.

7.2. The national planning framework (objective 19) makes the point that in areas under strong urban influence single houses in the countryside are acceptable subject to demonstrable social or economic need to live in a rural area. The area where the application site is located is close to Dublin city and is under strong urban influence in the NSS rural area types map referred to in the Sustainable Rural Housing Guidelines where these areas are described as being in the immediate environs or close commuting catchment of large cities and towns with rapidly rising population, evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network. The Guidelines require that planning authorities map rural areas within their administrative areas and develop policies to address demand for single houses in the countryside.

7.3. The application site is within an area zoned B with the objective to protect and improve rural amenity and to provide for the development of agriculture in the current County Development Plan. The county development plan elaborates on the objective in relation to single houses by requiring that applicants establish a genuine need to reside close to their employment where that employment must be related to the rural community in the area where they are expected to have spent a substantial period of their lives.

7.4. The planning authority sought additional information at application stage in relation to the pig farming business to which the application for a house was related and if pig farming was the applicant's primary occupation. The applicant responded that the farm has a capacity for 60 pigs, he is a full-time specialist free range pig farmer and sometimes works on adjoining farms.

- 7.5. The grounds of appeal expanded on this submission to state that the applicant has family and community connections in the area and that the land in is family ownership and will be gifted to the applicant for the purpose of building a house.
- 7.6. The basis of the NPF objective is that applicants for planning permission for single houses in the countryside close to cities and towns that are under pressure for residential development must be supported by a demonstrable social or economic need to live in that area. This is expanded upon by the County Development Plan requirement that applicants establish a genuine need to reside close to their employment where that employment is rural based. The applicant bases the application in large part on his employment as a pig farmer with supplementary work on neighbouring farms. The drawings submitted with the application show the landholding of which the application site forms part, including the applicant's parents' house on the opposite side of the Ballyedmonduff Road, and the proposed application site comprises 15 acres or 6.07ha. The average farm size in Ireland is 32.5ha or 80 acres (CSO figures).
- 7.7. If the applicant's parents' house site and the application site were subtracted from the total landholding I conclude that the area available for pig farming would not exceed 5ha. Notwithstanding some allowance for smaller scale niche free range farming enterprise I conclude, having regard to the national and local policy in relation to single houses in the countryside that the application does not arise from demonstrable social or economic need to live in this rural area.
- 7.8. The applicant makes a further point that the permission should be granted having regard to Section 37(2)(b)(ii) and (iii) of Act. The appeal states that the Section 37(2)(b)(ii) applies in this case. The relevant provisions allow the Board to grant a permission where the planning authority has refused permission for material contravention of the County Development Plan and the Board considers that there are conflicting objectives within the plan which would allow for a grant of permission. Having reviewed the provisions of the County Development Plan I conclude that there are no conflicting provisions within the policy framework in relation to single houses in areas zoned B set out in the Plan which requires the Board to overturn the planning authority's decision in the present case.

- 7.9. Section 37(2)(b)(iii) of Act allows the Board to grant permission following a decision by a planning authority to refuse permission for material contravention of the development plan where there is a conflict between the Development Plan provisions and the provisions of section 28 Guidelines, or the RSES and certain other policy provisions. The appeal makes the point that the application fulfils the criteria for one off housing set out in national policy objective 19 in the NPF.
- 7.10. I do not agree that there is a convincing case deriving from the Sustainable Rural Housing Guidelines or the NPF or elsewhere to support this application. The basic test of demonstrable social or economic need to live in this rural area has not been met in this case.
- 7.11. **Visual Amenity**
- 7.12. It is a policy of the planning authority (Policy LHB6) to protect and encourage the enjoyment of views and prospects of special amenity value or special interests. The planning authority refused permission, *inter alia*, because the proposed development would be prominent in the landscape and in views from the surrounding area.
- 7.13. The development plan (map 9) marks views of special amenity value to which policy objective LHB6 applies and these are located from the site entrance along the public road west of the application site entrance and then along the public road as it turns south. The issue of visual intrusion was raised by the planning authority in the request for further information and the applicant submitted a visual impact analysis.
- 7.14. While it is the case that the site is not consistently visible from the public road network in the area because of high roadside banks/walls and hedges it is increasingly visible from the Ballyedmonduff Road to west of the application site and from the wider area.
- 7.15. I agree with the planning authority on this point and I recommend that permission be refused for contravention of a development plan objective to protect views and prospects of special amenity.
- 7.16. **Traffic Safety**
- 7.17. The public road in the vicinity of the site entrance is narrow with a solid white line from that junction with Stepside Lane to the northeast. There are no footpaths, cycle paths, public lighting, pedestrian crossings and there are stretches of the road

where there is very limited pedestrian refuge on the road margins. This road network is relatively heavily trafficked, by residents of nearby houses, small businesses, farmers, car-based tourists/sightseers and recreational cyclists.

- 7.18. The application site is accessed over a gravelled lane which is narrow and inadequate for passing traffic. The application illustrates the theoretical availability of 70m sight distance in both directions from the proposed site entrance but this is not currently available and would require substantial works outside the application site in lands over which the applicant does not have control. Furthermore, there is a steep gradient down/south from the roadside edge (not illustrated in the application drawings) on the existing laneway which would require further works to make it suitable for the entrance/exit of domestic scale vehicles.
- 7.19. The planning authority's Transport Planning Section report states that there is no objection to the proposed development based on the submitted drawings.
- 7.20. The Sustainable Rural Housing Guidelines make the point (paragraph 4.4) that it is vitally important that new housing in rural areas which is located along non-national routes is located in such a manner as to avoid endangering public safety by reason of traffic hazard. The road network serving the application site is inadequate and relatively heavily trafficked. The sightlines at the proposed entrance are not available except with significant loss of roadside boundary on lands not in the applicant's ownership. The Sustainable Rural Housing Guidelines make the point that removal of hedge row should be avoided where possible and roadside boundaries are important features in both the landscape and ecology of rural areas.
- 7.21. I conclude that the proposed development would endanger public safety by reason of traffic hazard and obstruction of road users. The Board may consider this a new issue to be raised with the applicant.
- 7.22. **Effluent Disposal.**
- 7.23. It is proposed to drain domestic effluent from the proposed development to a proprietary effluent treatment system which includes a raised percolation area.
- 7.24. The site assessment form submitted with the application recorded a water table up to 1.5m below the ground surface and mottling in the trail hole. The recorded average T is 223, this time is outside the parameters of between 3 and 50 demonstrating suitability for safe effluent disposal in accordance with the EPA Code of Practice for

Wastewater Treatment and Disposal Systems for Single Houses (2009), the appropriate standard for applications submitted before June 2021. A raised percolation area is proposed in part mitigation this basic unsuitability. I carried out a walkover site inspection and observed reed growth and other vegetation consistent with a high watertable and consequent difficulty in dispersing domestic effluent within the site.

- 7.25. The planning authority's senior environmental health officer reported no objection subject to conditions.
- 7.26. I conclude that the site has a high watertable and an impermeable subsoil unsuitable to the safe disposal of domestic effluent and that the proposed development would likely lead to effluent ponding within the site and endanger public health.
- 7.27. The Board may consider this a new issue to be raised with the applicant.
- 7.28. **Appropriate Assessment**
- 7.29. Having regard to the nature and scale of the proposed development, the likely emissions therefrom, nature of the receiving environment and proximity to the nearest European site, I am satisfied that 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.

## 8.0 Recommendation

- 8.1. I recommend refusal.

## 9.0 Reasons and Considerations

1. Having regard to the location of the site within Area Under Strong Urban Influence as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the current Dun Laoghaire Rathdown County Development Plan, it is considered that the applicant does not come within the scope of the housing need criteria as set

out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based 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.

2. It is a policy of the planning authority as set out in the Dun Laoghaire Rathdown County Development Plan 2016 to 2022 to protect and encourage the enjoyment of views and prospects of special amenity value or special interest. The proposed development would be visible in views from the Ballyedmunduff Road in a manner as to seriously injure the visual amenity of the area and materially contravene the development objective set out in County Development Plan.
3. Access to the application site is from a public road where there are no footpaths, cycle paths, public lighting or pedestrian crossings and where sightlines in both directions are restricted. The proposed development would give rise to additional traffic turning movements at the site entrance on this substandard road network which would endanger public safety by reason of traffic.
4. The site is unsuitable for the safe treatment and disposal of domestic effluent arising from the proposed development. Having regard to the characteristics of the site including a high water table and very slow percolation, and notwithstanding the proposed proprietary treatment system, it is considered that the proposed development would give rise to water pollution and would be prejudicial to public health.

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Hugh Mannion  
Senior Planning Inspector

14<sup>th</sup> June 2021