



An  
Bord  
Pleanála

## Inspector's Report

### ABP-314034-22

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<b>Development</b>	Construction of a single-storey dwelling with a detached garage and all ancillary works.
<b>Location</b>	'Shangarry', Falls Road, Rathmichael, Co. Dublin.
<b>Planning Authority</b>	Dún Laoghaire-Rathdown Co. Council
<b>Planning Authority Reg. Ref.</b>	D22A/0275
<b>Applicant(s)</b>	Paul Sheridan
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Refuse permission.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Paul Sheridan
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	13 <sup>th</sup> April 2023
<b>Inspector</b>	Michael Dillon

## 1.0 Site Location and Description

- 1.1. The site, with a stated area of 0.22ha, is located on the northeast side of Falls Road, Rathmichael, Co. Dublin. The area is characterised by large, detached houses on generous landscaped plots. The site is largely flat, and forms the roadside portion of a larger dormer bungalow site – on which permission has been granted to demolish the centrally-located house and to construct a new, single-storey house on the rear portion. The existing, recessed vehicular entrance to the dormer bungalow is to be retained to serve both the permitted new house and the appeal site. The boundaries of the site are formed by mature hedges with trees – the roadside boundary hedge of box and laurel, being trimmed to 2.5m in height.
- 1.2. The 50kph speed restriction applies in this area. The road is wide enough for two cars to pass with care. Sight distance in either direction at the junction of Falls Road with Mullinastill Road (R116) to the northwest, is good. There are no public footpaths on Falls Road – although there is a footpath on one side of Mullinastill Road. This footpath connects with a footpath on Cherrywood Road (R116) – which in turn links to N11 dual carriageway to the north. In contrast, there is no footpath from Mullinastill Road along Bride’s Glen Road – the natural pedestrian route to the Luas terminus stop at Bride’s Glen. Public lighting is in place. Sight distance when leaving the site is somewhat restricted to the northwest, by a recently-erected lighting standard.

## 2.0 Proposed Development

- 2.1. Permission sought on 19<sup>th</sup> April 2022 for development as follows-
- Single-storey, flat-roofed house of 243sq.m.
  - Single-storey, flat-roofed, detached home-office/playroom unit of 48sq.m.
  - Detached triple garage of 50sq.m.
  - Proprietary pumped wastewater treatment system (‘Tricel Novo’) & sand filter area.
  - Vehicular access off shared driveway for the permitted and the proposed house.

- 2.1.1. The application is accompanied by a Site Suitability Report for septic tank – dated 4<sup>th</sup> January 2021. [This is the same report submitted with application ref. D21A/0728 on this site].

## 3.0 Planning Authority Decision

### 3.1. Decision

By Order dated 13<sup>th</sup> June 2022, Dún Laoghaire-Rathdown County Council issued a Notification of decision to refuse planning permission for one reason as follows-

The site is zoned A1 – within the Rathmichael LAP boundary, for which a plan will be prepared. Minor modifications are allowed within the LAP, pending the making of the LAP. The subdivision of the site and the construction of a second house does not comprise a minor modification. Development would be contrary to section 2.6.1.3 of the Plan, and would set an undesirable precedent for other similar types of development.

### 3.2. Planning Authority Reports

#### 3.2.1. Planning Report

The report, of 13<sup>th</sup> June 2022, summarises the other reports received by the planning authority. The report ultimately recommends refusal of permission on the grounds that the development would be premature, pending the preparation and adoption of a new Local Area Plan for Rathmichael.

#### 3.2.2. Other Technical Reports

*Municipal Services Department – Drainage Planning (23<sup>rd</sup> May 2022).*

Additional information sought in relation to the waste water treatment system proposed, and how it might impact on the Rathmichael Area Ground and Surface Water Protection Zone. Within zones such as this, a density of greater than 6 Domestic Waste Water Treatment Systems per hectare would trigger the requirement for cumulative loading, additional hydrogeological investigations, and watercourses.

*Environmental Health Service (31<sup>st</sup> May 2022).*

Proposal is acceptable subject to conditions relating to the 'Tricel Novo' WWTS proposed.

*Transportation Planning Division (2<sup>nd</sup> June 2022).*

Raises no objection – subject to conditions relating to construction traffic and activity.

### 3.3. Prescribed Bodies

*Irish Water (24<sup>th</sup> May 2022).*

Indicates no objection.

## 4.0 Planning History

**D21A/0173:** Permission refused on 23<sup>rd</sup> April 2021, to demolish a dormer bungalow on site of 0.39ha, and construct two new single-storey, flat-roofed houses with detached home-offices/playrooms and detached garages. This application was not the subject of an appeal to the Board. The reasons for refusal related to the inadequacy of Falls Road and the low density of development – below the 35 minimum units per ha – recommended in the Plan.

**D21A/0728:** Permission granted on 22<sup>nd</sup> February 2022 for demolition of dormer bungalow on site of 0.39ha, and construction of new single-storey, flat-roofed house with detached home-office/playroom and detached garage on rear portion of the site. There is no development to date on foot of this permission.

## 5.0 Policy Context

### 5.1. Development Plan

The relevant document is the Dún Laoghaire-Rathdown County Development Plan 2022-2028.

- The site is zoned objective 'A1' – 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'.

- The site is located within the Rathmichael Local Area Plan boundary – for which an LAP will be prepared.
- There is an objective indicated on Land-use Zoning Map 10 for a Proposed Luas Line Extension to the northeast of the site.
- Chapter 2 sets out the Core Strategy for the County. Section 2.6.1.3 of the Plan indicates that an LAP will be prepared for, *inter alia*, Rathmichael. The section states- on lands subject to zoning objective A1 – ‘To provide for new communities and Sustainable Neighbourhood Infrastructure in accordance with approved Local Area Plans’ - a wide range of uses are both permitted in principle and open for consideration. This acknowledges the fact that the Local Area Plan process will allow for a more granular breakdown of land uses. It is noted that within the A1 zoned lands at both Old Connaught and Rathmichael there are a number of existing properties. Minor modifications and extensions to these properties can be considered in advance of the relevant Local Area Plans.
- Policy CS10 of the Plan states- ‘It is a Policy Objective to implement a programme for the preparation of Local Area Plans and to prioritise areas in accordance with the overarching strategic objectives of the Core Strategy including those areas which are experiencing and/or likely to experience large scale development or regeneration’.
- Section 4.3.1.2 states, *inter alia*, under Policy Objective PHP19: Existing Housing Stock – Adaptation, ‘Densify existing built-up areas in the County through small scale infill development having due regard to the amenities of existing established residential neighbourhoods.
- Section 12.3.7.7, relating to ‘Infill’ states, *inter alia*- ‘In accordance with Policy Objective PHP19: Existing Housing Stock – Adaptation, infill development will be encouraged within the County. New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/ gateways, trees, landscaping, and fencing or railings’.

- Section 12.3.9 relating to demolition and replacement dwellings states, inter alia- 'The Planning Authority has a preference for and will promote the deep retro-fit of structurally sound, habitable dwellings in good condition as opposed to demolition and replacement unless a strong justification in respect of the latter has been put forward by the applicant. (See Policy Objective CA6: Retrofit and Reuse of Buildings and Policy Objective PHP19: Existing Housing Stock – Adaptation).

## 5.2. Natural Heritage Designations

The site is not located within or adjacent to any Natura 2000 sites. There are no watercourses either within or adjoining the site which could link this site with a waterbody-defined Special Area of Conservation or Special Protection Area. Wastewater will be discharged to a septic tank & percolation area; and surface water will be discharged to a soakway on the site. DL-RCC concluded that the proposed development would not significantly impact on a Natura 2000 site.

The proposed development is located within an outer suburban area, on zoned lands that are not serviced with sewers. It is reasonable to conclude, 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 any Natura 2000 sites. A Stage 2 Appropriate Assessment is, therefore, not required.

## 5.3. EIA Screening

DL-RCC concluded that there would be no real likelihood of the proposed development having a significant effect on the environment. Having regard to the nature of the proposed development, comprising the construction of an house and septic tank, in an outer suburban area, which is not served by sewers, 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 on preliminary examination; and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The appeal from Reid Associates, agent on behalf of the applicant, received by the Board on 8<sup>th</sup> July 2022, can be summarised in bullet point format as follows-

- The refusal of permission is the result of a singularly negative interpretation of the Development Plan. The development is compliant with the A1 zoning. The planning authority has not given consideration to infill development on this site.
- Permission has been granted for the demolition of the existing house on this site and its replacement with a new house and septic tank & percolation area. The principle of new residential development on this site has been established.
- The proposal is for small-scale, infill residential development, where family homes are required. The zoning supports residential use in principle. The site is not a 'greenfield' one, and is located within an existing suburb.
- No timeline has been given for the preparation of an LAP for Rathmichael.
- The development does not impose any demands on services – which are all contained within the site.
- The site comprises underutilised garden area – following on from permission ref. D21A/0728.
- The LAP is essentially to provide for a coherent approach to the intensification of large-scale residential development and to provide for infrastructure to serve it. The effect of the LAP process, as determined by the planning authority, is to sterilise all of the lands within the LAP boundary. The impediment to development in areas such as Rathmichael is the absence of infrastructure and services to serve planned development. The lands within the boundary of the LAP comprise 362ha – and stretch from the N11, across the M50 from Cherrywood to Old Connaught. The Core Strategy recognises that within LAP boundaries there are differences within them in relation to existing development. The subject site is an established suburban area –

unlike other parts of the LAP which are 'greenfield' in character. Existing residential sites within the LAP boundary will be able to provide for infill housing, which will help to meet the identified residential yield for 2,430 residential units for Rathmichael.

- The proposed development can be considered minor in the context of the size of the LAP and the amount of housing which is to be provided within it.
- The Board could grant permission for this development, without the LAP being in place.
- The LAP is necessary to facilitate large-scale residential development. Policy CS10 of the Plan states- 'It is a Policy Objective to implement a programme for the preparation of Local Area Plans and to prioritise areas in accordance with the overarching strategic objectives of the Core Strategy including those areas which are experiencing and/or likely to experience large scale development or regeneration'. This policy does not prevent ongoing infill incremental development.
- Section 2.6.2.1 of the Plan promotes infill residential development so as to achieve compact growth targets and regeneration.
- The Council could never have intended to sterilise development on A1-zoned lands, pending the completion of an LAP – as the Vacant Site Levy covers lands zoned 'A1'.
- The National Planning Framework encourages infill development in existing built-up areas. Half of all homes will be within existing built-up footprints – NPO 3b.
- Section 4.3.1.2 states, *inter alia*, under Policy Objective PHP19: Existing Housing Stock – Adaptation, has the objective to "Densify existing built-up areas in the County through small scale infill development having due regard to the amenities of existing established residential neighbourhoods". This policy applies on a county-wide basis (the only area excluded being Cherrywood SDZ).
- Section 12.3.7.7, relating to 'Infill' states, *inter alia*- 'In accordance with Policy Objective PHP19: Existing Housing Stock – Adaptation, infill development will



be encouraged within the County. New infill development shall respect the height and massing of existing residential units. Infill development shall retain the physical character of the area including features such as boundary walls, pillars, gates/ gateways, trees, landscaping, and fencing or railings'. The subject site is such an infill site. The proposed development will protect the established character of the area.

- The LAP process does not supersede the Development Plan policies and objectives.
- There is no evidence that the proposed development would set an adverse precedent. The decision to refuse permission would set an adverse precedent by sterilising all the lands within the LAP boundary from infill development.
- The proposal comprises a model of sustainable development.
- There is a need for a purposive interpretation of the development plan policies and objectives for infill development.

## 6.2. **Planning Authority Response**

The response of DL-RCC, received by the Board on 29<sup>th</sup> July 2022, indicated no further comment to make.

## 6.3. **Observations**

None received.

## 7.0 **Assessment**

### 7.1. **Development Plan Considerations**

- 7.1.1. The Planner's Report notes that, since permission was granted for the demolition of the dormer bungalow on this site and its replacement with a new single-storey house (D21A/0728), a new Development Plan has been adopted – and the zoning of the site changed from 'A' to 'A1'. Similarly, the position of the Council in relation to re-use of older buildings has changed – with the emphasis now being on retro-fitting

houses. It is the contention of the planning authority that the proposed development, the subject of this appeal, requires the demolition of the existing dormer bungalow on the site – as permission ref. D21A/0728 has not yet been implemented. I note that the current application did not provide for the demolition of the dormer bungalow. This dormer bungalow is only partly within the red-line boundary of the site; where the remainder is within the blue-line boundary of lands under the control of the applicant. I would be satisfied that the applicant has sufficient legal interest in the larger ‘Shangarry’ site to enable the development, if permitted, to be implemented. It would be necessary to make any permission for the construction of a house on the front portion of this site, contingent on the permission to demolish the dormer bungalow, being carried out. This would, perforce, reduce the life of any permission granted, to less than 5 years – or to be of a duration directly tied to the remaining life of permission ref. D21A/0738. A condition, making this clear, would have to be attached to any grant of permission for this second house on the site.

7.1.2. Permission has been granted for the demolition of the dormer bungalow on this site (D21A/0728) and its replacement with a new single-storey house. I would not consider that section 12.3.9 of the Development Plan, relating to retrofitting of structurally-sound houses, is of relevance in this instance – as the applicant has not sought permission to demolish the house. Notwithstanding this, the development could not proceed without the house being demolished – for which permission exists.

7.1.3. The zoning of the site has changed with the new Development Plan. The zoning now refers to provision for new residential communities and Sustainable Neighbourhood Infrastructure, in accordance with approved local area plans. The appellant argues that Falls Road is an established suburban area, and should not, therefore, be considered in the same light as ‘greenfield’ lands within the Rathmichael LAP boundary – on which lands new residential communities would be provided for. I would not agree with this argument. The Falls Road has been included within the boundary of the LAP. If the planning authority considered it an already fully-developed suburb of the county, then it would likely not have been placed within the LAP boundary. The appellant points out that the LAP boundary comprehends a very large area; and that no date has been given as to when the LAP might be in place. Section 2.6.1.3 of the Plan refers to an ambitious programme of LAP plan-making. In delivery of this this programme, the planning authority will

prioritise areas in accordance with the overarching strategic objectives of the Core Strategy, including those areas which are experiencing and/or likely to experience large-scale development or regeneration. The section goes on to state that a wide range of uses are both 'permitted in principle' and 'open for consideration'. The LAP will allow for a more granular breakdown of land uses. This is something of what might be expected in the level of detail which an LAP could include. The 'A1' zoning does allow for minor modifications and extensions to properties – pending the adoption of the LAP. This is entirely reasonable. I would agree with the contention that the construction of a second house on a subdivided plot does not constitute a minor modification. The appellant refers to 'sterilisation' of all development within the LAP boundary, pending the adoption of such an LAP. The zoning does allow for minor modifications, but not unreasonably, would wish to see a hold put on any development which could constrain the options open to the elected representatives, in making a new LAP.

- 7.1.4. The new 'A1' zoning clearly refers to 'Sustainable Neighbourhood Infrastructure'. This is an acknowledgement that, within the LAP boundary, there is a need to plan for all types of infrastructure in an orderly way. The current appeal site does not have the benefit of a connection to the limited public footpath network in the wider area; is not provided with a public foul sewer; is not provided with a public surface water sewer; does not have access to a cycling network; and does not have easy access to public transport. These absences are considerable, in what is a built-up suburban area of the county. The new Plan indicates proposals for a Luas line extension in close proximity to the site. It is likely that an LAP for Rathmichael will identify other infrastructure provision necessary in this area. The proposed development of a second house on this site would pre-empt any decision the elected members of DL-RCC may consider – particularly in relation to density of development, on this and adjoining sites. The proposed development would, therefore, be premature, pending the adoption of the Rathmichael LAP.

## 7.2. Design & Layout

- 7.2.1. The proposed house is the same as the one for which permission has been granted on the rear portion of the site. This permission (D21A/0728) has not been implemented – and the dormer bungalow on the site remains in situ. The design of

the house and the provision of a detached home-office/playroom and a triple garage is acceptable in design terms.

7.2.2. There is more than adequate private open space provided for residents of this house.

7.2.3. The proposed flat-roofed, single-storey house will not have any impact in terms of overlooking or overshadowing of adjoining property – existing or proposed. Neither will the detached home-office/playroom building or the detached garage impact on neighbouring property.

### 7.3. Access & Parking

7.3.1. Falls Road is without footpaths. The 50kph speed restriction applies in this area. Similarly, additional pedestrian movements which a development of this sort would generate, on a road without footpaths, would result in the creation of a traffic hazard. Sight distance to the northwest, for vehicles existing the site is restricted by a roadside public lighting column, located immediately to the northeast of the recessed entrance. The Plan indicates proposals for a Luas extension from Bride's Glen – some 150m to the northeast of the site. At present, there is a walk of 1.1km to the nearest bus route on the N11 – or to the Luas stop at Bride's Glen, all of which route has a footpath – with the exception of the Falls Road section (0.3km). The proposed development is premature, pending the consideration by the planning authority of how pedestrian, cycle, motor and public transport routes in the area are to be developed.

7.3.2. There is more than adequate space on the site for parking of cars.

### 7.4. Water Supply & Drainage

#### 7.4.1. Water

It is proposed to connect to the existing public water supply. Neither the location of the pipe nor the connection point is indicated on drawings submitted. Irish Water raised no objection to the proposal.

#### 7.4.2. Foul Effluent

The application was accompanied by a Site Suitability Report which was prepared for a previous application for two houses on this site – dated 4<sup>th</sup> January 2021. The existing septic tank serving the dormer bungalow on the site is to be decommissioned and backfilled – as per permission ref. D21A/0728. There is no public foul sewer in the area. Ground water was encountered at a depth of 1.9m (within a trial hole 2.1m deep). The site is not suitable for a standard septic tank. It is proposed to install a pumped effluent treatment system ('Tricel Novo') with 15sq.m polishing sand filter for tertiary treatment. This system is similar to the one proposed for the permitted new house on the site (ref. D21A/0728). Because of the location of the site within the Rathmichael Area Ground and Surface Water Protection Zone, additional information was recommended by the Municipal Services Department – Drainage section of DL-RCC. Within protection zones such as this, a density of greater than 6 Domestic Waste-Water Treatment Systems per ha would trigger the requirement for cumulative loading assessment, additional hydrogeological investigations, and assessment of any watercourses in the area. The proposed development could, therefore, be prejudicial to public health.

#### 7.4.3. Surface Water

It is proposed to discharge surface water to a soakway between the house and the road. There is no surface water sewer in the area.

#### 7.4.4. Flooding

The site is not located within an area subject to either fluvial or pluvial flooding – as per Flood Zone Map 10 of the Development Plan.

### 7.5. **Other Issues**

#### 7.5.1. Development Contributions

If the Board is minded to grant permission for this development, then a condition should be attached requiring payment of a development contribution in accordance with the Development Contribution Scheme for the county, currently in force. The site also falls within the boundary of the Section 49 Supplementary Development Contribution Scheme for Luas Line B1 – the site being 0.7km as the crow flies from the Bride's Glen Luas stop.

### 7.5.2. Hours of Construction

In the event that the Board is minded to grant permission for this development, then a standard condition relating to hours of construction should be attached, in order to protect the amenities of surrounding residential properties.

## 8.0 **Recommendation**

I recommend that permission be refused, for the reasons and considerations set out below.

## 9.0 **Reasons and Considerations**

1. The proposed development would materially contravene the 'A1' Development Plan zoning objective for this site – which seeks to provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans. The appeal site lies within the Rathmichael Local Area Plan (LAP) boundary – for which lands, Table 2.16 of the Plan indicates that a new LAP is to be prepared. The proposed development would pre-empt any proposals which the planning authority may wish to implement in relation to density of development and/or provision of sustainable neighbourhood infrastructure.
2. The proposed development would set an undesirable precedent for other similar types of development in the area – pending the adoption of the Rathmichael LAP.
3. In the absence of detailed knowledge in relation to the density of private septic tanks/effluent treatment units in the immediate area, the proposal to serve the development with a proprietary effluent treatment plant could be prejudicial to public health – being located within the Rathmichael Area Ground and Surface Water Protection Zone.
4. In the absence of a public footpath network on Falls Road, the proposed development would endanger public safety by reason of traffic hazard.
5. The proposed development would endanger public safety by reason of traffic hazard, resulting from additional vehicular traffic movements, at an egress

point where sight distance in a northwesterly direction is impacted by a roadside public lighting column.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

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**Michael Dillon,  
Planning Inspectorate.**

**14<sup>th</sup> April 2023.**