



An
Bord
Pleanála

Inspector's Report

ABP-315721-23

Development	Construction of a single/two storey dwelling
Location	Site to front of Clova, Lordello Road, Shankill, Dublin 18
Planning Authority	Dun Laoghaire Rathdown Co. Co.
Planning Authority Reg. Ref.	D22A/0853
Applicant(s)	Matthew and Fiona Broderick
Type of Application	Permission
Planning Authority Decision	Refusal of permission for 1 no. reason
Type of Appeal	First Party
Appellant(s)	Matthew and Fiona Broderick
Observer(s)	None
Date of Site Inspection	10 th October 2023
Inspector	Bernard Dee

Contents

1.0 Site Location and Description	3
2.0 Proposed Development	3
3.0 Planning Authority Decision	4
4.0 Planning History.....	5
5.0 Policy and Context.....	6
6.0 The Appeal	9
7.0 Assessment.....	11
8.0 Recommendation.....	12
9.0 Reasons and Considerations.....	13
10.0 Conditions	13

1.0 Site Location and Description

- 1.1. The appeal site is located on Lordello Road which is located west of the M50/M11 junction in Shankhill, Co. Dublin. Lordello Road is comprised mainly of large detached dwellings screened by mature planting and Victorian stone boundary walls. The character of Lordello Road could be said to be semi-rural in nature.
- 1.2. The site itself which measures 0.13ha, is located in front of (to the north) of Clova, a two storey modern house set back from the road. The proposed dwelling would be located between Clova and Lordello Road. The site is currently not in use for any purpose and has become overgrown through neglect.
- 1.3. The access lane which serves Clova is separated from the appeal site by a mature 2m high hedge but the appeal site is open to the south facing Clova. There are Victorian outbuildings to the west of the site and the northern boundary along Lordello Road is defined by a stone wall and vegetation.

2.0 Proposed Development

- 2.1. The proposed development comprises the construction of a new part single storey and part two storey detached contemporary four bedroom house measuring 148m² GFS and landscaping and ancillary works. The existing access off Lordello Road that serves Clova would also serve the proposed development.
- 2.2. From the drawings submitted to the Planning Authority the proposed dwelling has been designed in a modular style with a main two storey block and two satellite single storey blocks. There is a distinct vertical emphasis in the elevational treatment and all three blocks have pyramidal shaped roofs. Access is off the access road leading from Lordello Road to Clova and it appears that trees along this access road are to be largely retained.
- 2.3. It is proposed to connect the dwelling to the water mains but waste water would be retained on site and treated with a proprietary system and polishing filter.

3.0 Planning Authority Decision

3.1. Decision

Planning permission for the proposed dwelling was refused on 9th January 2023 for one reason:

1. Under the Dún Laoghaire-Rathdown County Development Plan 2022-2028, the site is subject to zoning objective A1, which seeks '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 a Local Area Plan will be prepared. Section 2.6.1.3 Local Area Plan Plan-Making Programme of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 notes that within the A1 zoned lands at Rathmichael there are a number of existing properties and 'minor modifications and extensions to these properties can be considered in advance of the relevant Local Area Plans.' The proposed development which comprises the construction of a new dwelling, having regard to its nature and scale, would not constitute 'minor modification and extensions to existing property'. As such, the proposed development would be contrary to the provisions of Section 2.6.1.3, would set an undesirable precedent for other similar developments and would be contrary to the A1 zoning objective of the area, which seeks 'to provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's Report on file, in summary, had regard to the following planning issues:

- Residential use is permitted in principle under the A1 zoning objective which seeks *"To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans,"* and that generally the provision of a new dwelling is acceptable in principle subject to Development Plan provisions.
- The Planner's Report appears satisfied with the design, layout and level of internal space provision and of external private open space as well as parking provision and access arrangements.
- The Planner's Report cites Section 2.6.1.3 of the Development Plan and notes that the site is located in an area where it is proposed to draw up the Rathmichael LAP and that within A1 zoned areas within such future LAP

boundaries, only minor modifications and extensions to dwellings will be permitted.

- The Planner's Report concludes therefore that a new dwelling would exceed the permissible development quantum in the absence of an LAP for the area and that the proposed development was therefore premature and should be refused permission.
- The Planner's Report did not feel that either Appropriate Assessment or Environmental Impact Assessment was necessary in connection with the proposed development.

3.2.2. Other Technical Reports

- The Drainage Department required further information in relation to the proposed domestic waste water treatment system. The Planner's Report notes that this information was not sought from the applicant given the intention to refuse permission on policy grounds.

3.2.3. Prescribed Bodies

- Not consulted.

3.2.4. Observations

- No observations received.

4.0 **Planning History**

4.1. On the Appeal Site

- Ref. D98B/0126 – grant of permission for a first floor extension to Clova.

4.2. In the Vicinity of the Site

- ABP Ref.314034-22 and PA Ref. D22A/0275 refers to a refusal of permission for a single storey dwelling at Shangarry, Falls Road, Rathmichael for the same reason as the current case. Shangarry is approximately 500m to the NW of the current appeal site.

Under the Dún Laoghaire-Rathdown County Development Plan 2022-2028, the site is subject to zoning objective A1, which seeks '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 a Local Area Plan will be prepared. Section 2.6.1.3 Local Area Plan Plan-Making Programme of the Dún Laoghaire-Rathdown County Development Plan 2022-2028 notes that within the A1 zoned lands at Rathmichael there are a number of existing properties and 'minor modifications and extensions to these properties can be considered in advance of the relevant Local Area Plans.' The proposed development which comprises of the sub-division of an existing site and the construction of a new dwelling, having regard to its nature and scale, would not constitute 'minor modification and extensions to existing property'. As such, the proposed development would be contrary to the provisions of Section 2.6.1.3, would set an undesirable precedent for other similar developments and would be contrary to the A1 zoning objective of the area, which seeks 'to provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

5.0 Policy and Context

5.1. Development Plan

Dun Laoghaire Rathdown County Development Plan 2022-2028 is the relevant statutory plan for the area.

The site is zoned Objective A1 for which the objective is to 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'. Residential development is 'Permitted in Principle' in A1 zoned areas.

2.4 The Core Strategy

2.4.1 Settlement Hierarchy - 2.4.6 Phasing - The lands at Old Connaught and Rathmichael are both zoned Objective 'A1' – 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans.' As provided under the LAP programme contained in Table 2.16, it is the intention of the Council to prepare Local Area Plans for both of these new communities during the lifetime of the Plan.

Table 2.6 – Rathmichael – New Plan to be prepared.

2.6.1.3 Local Area Plan Plan-Making Programme

The County Development Plan proposes an ambitious programme of LAP plan-making and provides for the preparation of LAPs for Dundrum, Dún Laoghaire and Environs, Old Connaught, Rathmichael, Glencullen, Sallynoggin, Deansgrange, and

a new LAP for Kiltiernan-Glenamuck. In delivery of 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.

There are currently 6 no. adopted LAPs in DLR and these include plans for Ballyogan and Environs, Woodbrook/Shanganagh, Stillorgan, Goatstown, Blackrock and Kiltiernan/Glenamuck. Table 2.16 below outlines the status of these Plans and also indicates their consistency with the Core Strategy of the County Development Plan. Section 19 of The Act provides that a Planning Authority must commence a review of a LAP six years after the making of the previous LAP unless, not more than five years after the making of the previous LAP, the Planning Authority by resolution defers commencing the review process for a further period of five years because it is considered that the LAP remains consistent with objectives of the County Development Plan and the Core Strategy. LAPs that are due to expire during the lifetime of the County Development Plan, and have not been previously extended, may be assessed under these criteria.

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 Objective CS10– Local Area Plans

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.

Chapter 12 Development Management

12.3.7 Additional Accommodation in Existing Built-up Areas

- 12.3.7.7 Infill 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. This shall particularly apply to those areas that exemplify Victorian era to early-mid 20th century suburban ‘Garden City’ planned settings and estates that do not otherwise benefit from ACA status or similar. (Refer also to Section 12.3.7.5 corner/side garden sites for development parameters, Policy Objectives HER20 and HER21 in Chapter 11)
- 12.8.3.3 Private Open Space (i) Private Open Space for Houses: a minimum of 60m² is required for new three- bed dwellings.

5.2. Natural Heritage Designations

- There are no designated sites located in the vicinity of the appeal site.

5.3. EIA Screening

Having regard to the limited nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity/ the absence of any connectivity 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

The planning issues relevant to this appeal raised by the First Party are, in summary, as follows:

- The proposed dwelling was deemed acceptable in the assessment in the Planner's Report in terms of compliance with development standards contained in the Development Plan – design, room size, separation distances, parking and amenity were all deemed to be sufficient. The only question mark in the assessment related to the on-site waste water treatment system and an attachment with the First Part appeal resolves any difficulties with regard to this aspect of the proposed development – report by EurGeol to which I draw the Board's attention.
- The only reason for refusal therefore relates to the prematurity of the proposed development in the absence of the Rathmichael LAP within which area the appeal site is located. It is unreasonable to refuse permission for the proposed dwelling on this basis for the following reasons:
 - While it is the stated intention of the Planning Authority to complete the Rathmichael LAP within the lifetime of the current Development Plan (i.e. by 2028), it is totally unreasonable to delay the consenting and construction of a family home to align with some arbitrary LAP adoption timescale.
 - There is no guarantee that the LAP will be adopted by 2028 and the Planning Authority has a poor record in achieving such targets as an LAP for the Rathmichael area (in combination with Ferndale Road or Cherrywood in previous iterations of the Development Plan) have been set in the 2016-2022, 2010-2016 and 2004-2010 Development Plans. None of these targets have been met.
 - The appeal site can only ever be used for residential purposes given the A1 zoning. Given the 0.13ha size of the site only a family home can be accommodated on the site. There is no need therefore to await the adoption of an LAP that will state that only residential use at low density (to match the pattern of development in the area) is permissible.

- As the site measures 0.13ha and the Rathmichael LAP area covers 83ha, the development of the appeal site for the construction of a family home can only have negligible impacts on the overall plan-led development of the area which the LAP will seek to achieve.
- Refs. D15A/0215, D15A/0308 and D15A/0826 all relate to refusals for family homes on Falls Road (approximately 1km north of Lordello Road) by the Planning Authority where the Board overturned the decision to refuse. These sites have the same zoning as the appeal site and are not covered by an LAP.
- Section 7.16.1 of the Development Management Guidelines (2007) states that *“development which is premature because of a commitment in a development plan to prepare a strategy, Local Area Plan or framework plan not yet completed should only be used as a reason for refusal if there is a realistic prospect of the strategy or plan being completed within a specific stated time frame”*. Having regard to the track record of the Planning Authority in producing an LAP for the area which stretches back to the 2004-2010 Development Plan the First Party has no confidence that the 2028 target, itself an unreasonable amount of time from now, will be met.
- The First Party asks the Board to adopt a common sense and reasonable approach in the assessment of this case.

6.2. Planning Authority Response

- The Planning Authority response indicates that nothing contained in the First Party appeal would justify a change to their decision in this case.

6.3. Applicant Response

- Not applicable.

6.4. Observations

- None received.

6.5. Further Responses

- Not applicable.

7.0 Assessment

7.1. Having examined all the application and appeal documentation on file, and having regard to relevant local and national policy and guidance, I consider that the main issues in this appeal are those raised in the grounds of appeal and I am satisfied that no other substantive issues arise. Given the residential zoning of the appeal site, the proposed dwelling is acceptable in principle subject to compliance with development standards set down in the Development Plan.

7.1.1. The primary planning issue therefore is whether or not the proposed residential development is compliant with the Development Plan Objective A1 for which the objective is to *'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'*. The issues of design/visual impact, overshadowing/overlooking; traffic hazard; potential impact on residential amenity; and sundry other issues have been assessed in the Planner's Report which found the proposed development to be in compliance development standards set down in the Development Plan. I would concur with this assessment.

7.1.2. The issue of AA Screening is also addressed in this assessment.

7.2. Rathmichael LAP

7.2.1. While it is laudable for the Planning Authority to adopt a plan-led approach to avoid piecemeal development and avoid placing undue strain on services provision, I feel that the intent of an LAP for Rathmichael is to guide larger scale development, especially mixed use development, and to allocate adequate lands for amenity, education, health and other community uses.

7.2.2. The appeal site is suitable only for low density residential use and any future LAP for the area is unlikely in the extreme to come to an alternative conclusion. Given the context and the services capacity issue necessitating an on-site treatment system the appeal site is capable of accommodating a family home and nothing else. This is highly unlikely to change in the future.

7.2.3. Having regard to this situation, I do not feel it is reasonable to delay the construction of a family home at the appeal site until the adoption of the LAP by 2028 at the latest. I would also have misgivings, given the slippage in achieving LAP adoption targets track record for the area that an LAP will be in place by the 2028 target year.

7.2.4. I would ask the Board to note that in all other respects the family home complies with Development Plan standards as assessed in the Planner's Report. I would concur with this assessment with a minor modification proposed to remove the storage area at roof level in the interests of visual amenity.

7.2.5. Accordingly I would recommend that the Board grant permission for the proposed development notwithstanding the absence of an LAP for the Rathmichael area.

7.3. AA Screening

7.3.1. Having regard to the relatively minor development proposed within an existing residential area and the distance from the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 Recommendation

I recommend that planning permission be granted for the proposed dwelling for the reasons and considerations set out below and subject to the following conditions.

9.0 Reasons and Considerations

Having regard to the provisions of the Dun Láoghaire Rathdown Development Plan 2022-2028, including the zoning objective for the site Objective A1 for which the objective is to 'To provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans', it is considered that, subject to compliance with the conditions set out below, the proposed development would not be contrary to Development Plan policy, would not seriously injure the visual or residential amenities of the area, or of property in the vicinity, would provide an acceptable standard of amenity for future residents, and not, by virtue of overlooking or overshadowing lead to loss of privacy or amenity in neighbouring properties. Further, the location of the vehicular entrance to the site does not represent a traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 Conditions

1.	<p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 8th November 2022, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interest of clarity.</p>
2.	<p>Details of the materials, colours and textures of all the external finishes of the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>Reason: In the interest of visual amenity.</p>
3.	<p>The storage area located on the roof slope shall be omitted and drawings giving effect to this modification shall be submitted to, and agreed in writing with, the planning authority prior to commencement of</p>

	<p>development.</p> <p>Reason: In the interest of visual amenity.</p>
4.	<p>Surface water from the site shall not be permitted to drain onto the adjoining public road.</p> <p>Reason: In the interest of traffic safety</p>
5.	<p>(a) A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the planning authority. Details of the system to be used, and arrangements in relation to the ongoing maintenance of the system, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p>(b) Treated effluent shall be discharged to a raised percolation area which shall be provided in accordance with the requirements of the document entitled "Code of Practice - Wastewater Treatment and Disposal Systems Serving Single Houses (p.e. ≤ 10)" – Environmental Protection Agency, 2021.</p> <p>(c) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner and that the raised percolation area is constructed in accordance with the standards set out in the EPA document.</p> <p>Reason: In the interest of public health.</p>
6.	<p>Site development and building works shall be carried out only between the hours of 0800 and 1900 from Mondays to Fridays inclusive, between 0800 and 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p>Reason: In order to safeguard the residential amenities of property in the</p>

	vicinity.
7.	<p>The developer shall pay to the planning authority a financial contribution of in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.</p> <p>Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.</p>

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.

Bernard Dee
Planning Inspector

11th October 2023