



An
Bord
Pleanála

Inspector's Report ABP-315819-23

Development

Construction of a detached two-storey 5-bed dwelling with photovoltaic panels on the roof of the south elevation and a new on-site wastewater treatment system, together with the provision of a new vehicular entrance and driveway, landscaping and all associated site development works.

Location

Old Rathmichael, Shankill, Dublin 18

Planning Authority

Dun Laoghaire Rathdown County Council

Planning Authority Reg. Ref.

D22A/0914

Applicant(s)

Jackie & Mike Murphy

Type of Application

Permission

Planning Authority Decision

Refuse

Type of Appeal

First Party

Appellant(s)

Jackie & Mike Murphy

Observer(s)

None

Date of Site Inspection

25/06/2023

Inspector

Lorraine Dockery

1.0 Site Location and Description

- 1.1. The subject site, which has a stated area of circa 0.58 hectares, is a greenfield site located on the northern side of Old Rathmichael, Shankill, Dublin 18. There is an existing entrance and gate located to the south/southwest of the site. The site is bound by residential properties to the west with undeveloped lands located to the rear (north) and east. This area is characterised by large, detached dwellings of varying styles and appearance on relatively large sites.

2.0 Proposed Development

- 2.1. Permission is sought for construction of a detached, two-storey dwelling with photovoltaic panels on roof, on-site wastewater treatment system, new vehicular access and site development works.
- 2.2. The proposed dwelling has a stated area of 419m²

3.0 Planning Authority Decision

3.1. Decision

The planning authority REFUSED permission for the following two reasons:

1. Under the Dun-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 Dun-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 modifications 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.

2. Due to Endangerment of Public Safety as a result of additional traffic and vulnerable road users on Old Rathmichael and the adjacent linking roads, which do not currently have adequate pedestrian facilities, the proposed development would endanger public safety by reason of traffic hazard or obstruction of road users or otherwise, as per Clause 4 of the FOURTH SCHEDULE of the Planning and Development Act, 2000. The proposed development would be contrary to the provisions of Section 12.4.8 of the Dun-Laoghaire-Rathdown County Development Plan 2022-2028 and would set an undesirable precedent for other similar developments. 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

- Reflects decision of planning authority; recommends refusal of permission

3.2.2. Other Technical Reports

Drainage Division- no objections, subject to conditions

Transportation Division- refusal recommended (for reason similar to decision of planning authority)

Environmental Enforcement- conditions recommended

Environmental Health Section- further information requested

4.0 Prescribed Bodies

None

5.0 Planning History

None

6.0 Policy and Context

6.1 National Policy

Development Management, Guidelines for Planning Authorities (2007)

Section 7.16.1 Premature development

...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.

6.2 Development Plan

The Dun Laoghaire County Development Plan 2022-2028 is the operative County Development Plan.

Zoning: The site is zoned 'Objective A1' which seeks 'to provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'.

Section 2.6.1.3 Local Area Plan Plan-Making Programme

Section 12.10.3 Wastewater Treatment Systems

Section 12.3.7 Additional Accommodation in Existing Built-Up Areas

Section 12.3.7.7 Infill

Section 12.4.8 Vehicular Entrances and Hardstanding Areas

The subject site is located within the proposed Rathmichael Local Area Plan boundary for which a Local Area Plan will be prepared.

6.3 Natural Heritage Designations

The appeal site is not located in or immediately adjacent to a designated European Site, a Natural Heritage Area (NHA) or a proposed NHA.

6.4 EIA Screening

Having regard to the nature and scale of the development proposed, the site location within an established built-up urban area which is served by public infrastructure and outside of any protected site or heritage designation, the nature of the receiving environment and the existing pattern of residential development in the vicinity, and the separation distance from the nearest 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.

7 The Appeal

7.1 Grounds of Appeal

The main points of the appeal are:

- Refutes reasons for refusal

First Reason

- Considers it unreasonable to refuse permission for proposal on the basis of prematurity in advance of the adoption of the anticipated future Rathmichael LAP. Cites Development Management, Guidelines for Planning Authorities (2007), in particular section 7.16.1 Premature development in this regard.

Notes that there is currently no Rathmichael LAP in place, nor is there a draft and no specific timeframe has been stated (in Development Plan or otherwise) for completing this LAP. Contacted Forward Planning section of planning authority regarding timeframe for preparing and completing Rathmichael LAP and were informed that PA cannot provide a commencement date or an adoption date for this LAP (correspondence submitted with appeal). Cites Board decisions where this issue arose previously, including Reg. ABP-301845-18

- In terms of potential to prejudice LAP, cites DoE (1982) document 'Development Control Advice and Guidelines' (specifically paragraph 4.9) in this regard. Contends that the granting of permission for a further single house on residentially zoned lands does not pose any significant risk of prejudicing the outcome of the Rathmichael LAP.

Second Reason

- Report submitted from NRB Consulting Engineers which addresses this reason for refusal
- Notes extremely trafficked road that is Old Rathmichael; shared surface environment; no record of traffic accidents/incidents
- Cites DMURS in terms of creating streets as places rather than just for movement of vehicles
- Cannot agree that the addition of a single dwelling could be considered to endanger public safety or create a traffic hazard; proposal will result in no change to the existing benign and safe traffic conditions pertaining

Other

Sought legal opinion from John T. Gibbons, Senior Counsel (included in submission). This Opinion states that appeal statement and appendices thereto deal comprehensively and in a reasoned manner with issues raised in reason for refusal. Essential point made in planning appeal is that the planning authority acted unreasonably in its decision to refuse permission on the ground that it was premature pending the preparation of the Rathmichael LAP when the planning authority is not in a position to advise when such LAP will be prepared or even when

it will commence works on its preparation. Cites DoE (1982) document 'Development Control Advice and Guidelines' (specifically paragraph 4.9) in this regard. Sound planning judgement dictates that the granting of permission for a further single house on an infill, vacant site will not prejudice the preparation and/or ultimate adoption of the Rathmichael LAP. In terms of the second reason for refusal, notes the submitted report by Eoin Reynolds in this regard

7.2 Planning Authority Response

Grounds of appeal do not raise any new matter, which, in the opinion of the planning authority, would justify a change of attitude to the proposed development

7.3 Observations

None

7.4 Further Responses

None

8 Assessment

8.1 I have read all the documentation attached to this file including inter alia, the appeal, the report of the Planning Authority and subsequent response, in addition to having visited the site. The primary issues, as I consider them, are the two reasons for refusal namely (i) policy context/prematurity (ii) traffic and transport matters (iii) other matters.

Policy Context/Prematurity

8.2 The subject site is zoned 'Objective A1' which seeks to "to provide for new residential communities and Sustainable Neighbourhood Infrastructure in accordance with approved local area plans'. Residential development is permitted in principle under this zoning objective. I consider the proposed development to be in accordance with the zoning objective for the site. I have examined all of the information before me in relation to this matter and note the concerns raised by the planning authority in this regard. I note the argument put forward by the first party

appellants (which includes for Legal Opinion) and I generally concur with the appellant's argument in this regard. I note the Development Management Guidelines (2007), in particular section 7.16, which relates to premature development. This 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. I also note the DoE (1982) document 'Development Control Advice and Guidelines' (specifically paragraph 4.9) in this regard, referenced within the appeal documentation. I note that there is a commitment in the operative County Development Plan to prepare a LAP for Rathmichael. It is stated in the Planner's Report that it is anticipated that a local area plan will be advanced in 2023-2024. I am unclear as where this date originates. I note Table 2.16 of the operative County Development Plan states that a new plan is to be prepared for Rathmichael, with no date given. Correspondence, submitted with the appeal documentation, between the first party and the planning authority, states that the planning authority has not finalised the Local Area Plan programme. There appears therefore to be currently no date for the completion, adoption or indeed commencement of the preparation of this Plan. At the present time, there appears to be no realistic prospect of the LAP being completed within a specified time frame. The planning authority did not refute this assertion in their response to the appeal. Having regard to the above, I therefore consider that the proposed development not to be premature at the current time.

- 8.3 I note the locational context of the site, on a roadway with a stated fourteen dwellings on relatively large sites. Many of the sites have already been developed as such. The proposal could therefore be loosely described as infill development. The operative Development Plan is generally favourable to infill development, subject to normal planning criteria, and I note section 12.3.7.7 of the Plan in this regard. The site is located on lands for which residential development is permitted in principle. Given the existing pattern of development in the area and the fact that the proposal before me reflects this existing pattern, I would concur with the appellant's opinion that the granting of permission for a further single house on residentially zoned lands does not pose any significant risk of prejudicing the outcome of the Rathmichael LAP.

8.4 Having regard to all of the above, in particular having regard to the advice contained in the Development Management Guidelines (2007) and in the absence of a realistic prospect of the LAP being completed within a specified time frame, I consider that it would unreasonable and inappropriate to refuse permission for the proposed development on the grounds that the development is premature at this time.

Traffic and Transport Matters

8.5 I note the concerns raised by the planning authority with regards to this matter, as outlined in the second reason for refusal. I am not unduly concerned in this regard. I note the low level of development on this roadway and that traffic movements are generally low. I acknowledge that Old Rathmichael and the adjacent linking roads do not currently have segregated pedestrian facilities. However, the Transportation Division of the planning authority do state that this item may be remedied through a future road improvement scheme and the provision of additional connections/facilities in the area. I note the argument put forward by the appellant's in relation to the shared surface nature of the laneway, as per DMURS, given the low traffic volumes. I would agree with the appellants in this regard. In terms of pedestrian facilities along the adjoining link roads, while I note the situation is not ideal, I consider that the matter is not so great as to warrant a refusal of permission. During my site visit, I noted one vehicle on Old Rathmichael. This is a cul-de-sac and given the level of development thereon, traffic movements are anticipated to be low. There is an existing entrance onto the roadway from the site. It is merely being relocated, therefore no additional entrance is proposed. Given the limited scale of the proposed development (one single dwelling), I would not anticipate it to lead to the generation of significant volumes of traffic, either on the cul-de-sac or in the general vicinity. In-curtilage parking is proposed. The proposal is substantially in compliance with Development Plan standards in this regard, including section 12.4.8. Matters relating to construction traffic could be adequately dealt with by means of condition, if the Board is disposed towards a grant of permission.

8.6 Having regard to all of the above, I am generally satisfied in this regard and have no information before me to believe the proposal would lead to the creation of a traffic hazard or obstruction of road users.

Other Matters

- 8.7 I highlight to the Board the density of development proposed- one single dwelling on a site in excess of 0.5 hectares. While I would generally not consider this density of development to be appropriate on residentially zoned lands within the Dublin area, in this instance I consider it acceptable given the prevailing density of development along the roadway, the proximity to high amenity zoned lands and the existing infrastructure. I note that proposals for greater density on other lands along this roadway were previously refused permission by An Bord Pleanála (Ref. 247918 and 246253). Having regard to all of the above, I am satisfied in this regard.
- 8.8 I note that a wastewater treatment system is proposed (tertiary treatment system and infiltration/treatment area). I note the Environmental Health Officer's Report requests further information in relation to this matter, namely the submission of a plan showing the position of neighbouring waste water treatment systems demonstrating compliance with distance requirements, as per Table 6.2 EPA Code of Practice for Domestic Waste Water Treatment Systems 2021. I consider that required separation distances should be achievable, given the overall site size and location of existing residential properties relative to same. I am satisfied that if the Board is disposed towards a grant of permission, that this matter could be adequately dealt with by means of condition.
- 8.9 I note that the proposed dwelling substantially complies with the operative Development Plan in terms in internal standards. I consider that the subject site has the capacity to accommodate a development of the nature and scale proposed, without detriment to the amenities of the area. Dwellings of varying styles, materials and eras are evident along the laneway. The planning authority have not raised concern in this regard. I have no information before me to believe that the proposal would lead to the setting of precedent for other similar developments in the vicinity. In any event each application is assessed on its own merits.

Conclusion

- 8.10 Having regard to the limited extent, height and design solution put forward, I am satisfied that the proposed development is in accordance with the zoning objective of the County Development Plan, is in keeping with the pattern of development in the

area and is in accordance with the proper planning and sustainable development of the area.

9 Appropriate Assessment Screening

9.1 Having regard to the nature and scale of the proposed development, the location of the site within an adequately serviced urban area, the physical separation distances to designated European Sites, and the absence of an ecological and/or a hydrological connection, the potential of likely significant effects on European Sites arising from the proposed development, alone or in combination effects, can be reasonably excluded.

10 Recommendation

10.1 I recommend permission be GRANTED subject to conditions.

11 Reasons and Considerations

Having regard to the zoning objective of the area, the design, layout and scale of the proposed development and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area nor would it lead to the creation of a traffic hazard or obstruction of road users. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area

12 Conditions

1.	The development shall be carried out in accordance with the plans and particulars lodged with the application, 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
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	<p>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>Prior to the commencement of any works on site, the applicant shall submit for the written agreement of the planning authority showing compliance with Table 6.2 of the EPA Code of Practice for Domestic Waste Water Treatment Systems 2021 in relation to the position of the proposed wastewater treatment system is proposed (tertiary treatment system and infiltration/treatment area relative to those of neighbouring properties</p> <p>Reason: In the interests of public health</p>
3.	<p>Details of the materials, colours and textures of all the external finishes to the proposed dwellings 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>
4.	<p>The site shall be landscaped in accordance with a comprehensive scheme of landscaping, details of which shall be submitted to, and agreed in writing with, the planning authority prior to the commencement of development.</p> <p>Reason: In the interests of residential and visual amenity</p>
5.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0900 to 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 amenities of property in the vicinity.</p>
6.	<p>All service cables associated with the proposed development (such as electrical, telecommunications and communal television) shall be located underground.</p> <p>Reason: In the interests of visual and residential amenity.</p>

7.	<p>Water supply and drainage arrangements including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.</p> <p>Reason: In the interest of public health and surface water management.</p>
8.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures including noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
9.	<p>The developer shall pay to the planning authority a financial contribution 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.</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.

Lorraine Dockery
Senior Planning Inspector

26th June 2023