

SUBMISSIONS OF REBECCA O'CONNOR

Introduction

1. My name is Rebecca O'Connor and I reside at [REDACTED]
[REDACTED]. I am entering these submissions for the purpose of seeking to have the zoning status of my housing estate at the above address (hereinafter "*the Estate*") changed from Enterprise and Employment or "EE" to Existing Residential or "RES" in the new Draft South County Council Development Plan (hereinafter "*the 2022 Plans*").
2. It is submitted that the Estate should be rezoned to Existing Residential for the following reasons:
 - (i) That the history of the Estate has been purely residential and there have never been any use of same for Enterprise and Employment purposes.
 - (ii) That the Estate must have previously been zoned as some form of Residential or at the very least that residential development has previously permitted therein.
 - (iii) That even if the Estate was zoned as Enterprise and Employment in recent times, it is within the discretion of the Council to reverse or change this zoning.
 - (iv) That the surrounding area has a mixed class of Developments and that there is an abundance of other residential properties in the vicinity of the Estate.
 - (v) That the residents of the Estate are all supportive of the rezoning of the Estate from Enterprise and Employment to Existing Residential.
 - (vi) That the fact that the Estate is zoned as Enterprise and Employment wrongfully prevents any opportunity for future improvements or development for its residents.

Point 1- That the history of the Estate has been purely residential and there have never been any use of same for Enterprise and Employment purposes.

3. The Estate while small in nature has a rich history of having solely residential dwellings as part of same. Historically, the Estate would have comprised of solely agricultural land or fields as much of the surrounding area would have been in what was still a very rural area. The first residential development then took place upwards of 110 years ago and the Estate since then has been used solely for residential purposes.
4. Since then, there have been five generations of residents who have lived as a close community in the estate with the Properties having generally been passed down from generation to generation and with the same set of families having been in occupation of the entirety of the Estate. It goes without saying that there have never been any buildings constructed that have been used for any enterprise or commercial reasons and that is why it was such a surprise to find that the Estate had been rezoned as Enterprise and Employment without any notice being given to any of the residents of the Estate. It was an occurrence that nobody in the Estate saw coming.

Point 2- That the Estate must have previously been zoned as some form of Residential or at the very least that residential development has previously permitted therein.

5. The only development that has occurred in my estate has been residential development and there has never been any development which has taken place that could be associated with enterprise and employment related activities. The house where I was brought up was originally a cottage before permission was granted approximately 25 years ago for my parents to construct a larger two- story dwelling that now stands in its place. I do not have the exact planning or zoning history of the Estate at hand, but this must have meant that same was zoned as residential or at least permitted a mixed class of development which included the development of my home.
6. It has therefore come as a big surprise to find that the Estate has subsequently been rezoned solely for Enterprise and Employment purposes, something that has had no relevance whatsoever to the history of the Estate. While I acknowledge that the Council are not mandated to inform interested parties that a specific area in its jurisdiction has been rezoned, I am still a little upset that this process did not occur, and the residents of the Estate and I would have strongly resisted any attempts to do so if and when this process may have occurred.

7. It is clear from an examination of the Planning Applications and subsequent Decisions on your portal that there have been a wide variety of Decisions granting permission for residential development in the plots of land adjacent to the Estate and immediately across the road from the Estate. This includes retention permission being given for two Apartments which comprises part of the Green Isle Business Park in or around 2001.

Point 3- That even if the Estate was zoned as Enterprise and Employment in recent times, it is within the discretion of the Council to reverse or change this zoning.

8. As previously submitted, the residents of the Estate had no actual or constructive knowledge that the estate was to be zoned as enterprise and employment and are in no way sure as to when this process occurred or was carried out. The law is clear however that if the estate was rezoned as Enterprise and Employment as part of the 2016 Development Plan or possibly one of the preceding Development Plans, there is no impediment for the Council to changing the zoning back to its previous classification or a different classification for that matter, even where the Estate has very recently been rezoned. The case of *Mahon v. An Bord Pleanala* ([2010] IEHC 495 at page 39) clearly shows that the Council would have a residual discretion to rezone the estate as Residential, notwithstanding if and when the original rezoning from Residential to Enterprise and Employment took place.
9. The Council are mandated to make a new Development Plan every six years so it would be perfectly open for the Council to revisit the zoning statue of the Estate should the circumstances in relation to the Estate ever change or if the lands are sold. It would be open for the Council to revisit the matter either as part of a new Development Plan or using the procedure that is available to change the zoning of the Estate in the intervening period between Development Plans. It is critical to note that none of the residents of the Estate ever have or currently wish to sell their Dwellings for the purpose of the development of any Enterprise and Employment style development.

Point 4- That the area has a mixed class of Developments and that there is an abundance of other residential properties in the vicinity.

10. From an examination of the area in general, there are a multitude of different developments which have occurred and take pride of place along the Old Naas Road. To the right of the Estate, there is the popular Green Isle Hotel while to the left, there is a mixed estate which consists of the Green Isle Business Park with both Enterprise and Employment and Residential developments therein, and furthermore there are a multitude of residential Estates and on the other side of the Old Naas Road from the Estate.
11. It is clear that I am not asking for the Estate to be rezoned in circumstances where the surrounding area is solely utilised for Enterprise and Employment or any non- Residential purposes or in other words where the Estate is planted in the middle of an industrial estate. The Estate also does not form part of the Green Isle Business Park. Therefore, it is submitted that the rezoning of the estate would not constitute spot zoning.

Point 5- That the residents of the Estate are all supportive of the rezoning of the Estate from Enterprise and Employment to Existing Residential.

12. From a discussion with my family and my neighbours, the residents of the Estate are fully supportive of the attempts to rezone same as residential which it has always been utilised for. It is my belief that a number of other residents will be submitting their own submissions in relation to the matter and the attempts to rewrite the wrongs of the previous zoning.

Point 6- That the fact that the Estate is zoned as Enterprise and Employment wrongfully prevents any opportunity for future improvements or development for its residents.

13. It is important to note that the 2022 Plans propose to re- enact or repeat the 2016 Development Plan in ensuring that Table 11.10 in the 2016 Plans is at least substantially re- enacted at Table 13.10 in the 2022 Plans which govern the permissible uses for the Properties which form part of an Enterprise and Employment zoned area. It is clear that Table 13.10 will ensure that any form of residential development must be rejected with there being little room for manoeuvre for the Council to grant permission for any such residential development in these circumstances.

14. Furthermore, I am aware that any rezoning of the Estate would not be a guarantee of planning permission for its residents. It is submitted that a restrictive zoning represents only one of a number of possible impediments to any grant of planning permission and any Proposed Development would still have to rightfully clear a multitude of hurdles with the Council before permission is granted. What is important however is that the Council would be able to judge the merits of any Application on their facts and make an informed decision on the merits of same without having an impediment in place such as a restrictive zoning category which would ensure that residential development is not even considered. It is especially prevalent in a solely residential estate where it is wrong that an Applicant could present a perfectly sound Application which would have a benefit to the Applicant and equally to the estate and to find that the Application would not be considered due to the area being zoned as something that it never has and never will be used for, enterprise and employment in this case.
15. Should the Council reject the Development of a residential property in an Enterprise and Employment zoned area, as they are obliged to do in circumstances where the development would constitute a material contravention of the local Development Plan, an Applicant would then have to Appeal the decision to An Bord Pleanala who rightly take a very restrictive view of Appeals against refusals where it is alleged that the Development Plan would be contravened. The scope for An Bord Pleanala to depart from the Council's decision is rightfully very narrow and the factual narrative or scenario may not fit into the restrictive test that An Bord Pleanala operates. Again, an Applicant may be faced with having no chance of carrying out any residential development in a purely residential area and where the development is high class in nature and satisfies all other facets of the Development Plan and the Building Regulations. It is submitted that this is both arbitrary and unfair.

Conclusion

16. For the foregoing reasons, I would urge the Council to amend the zoning of my estate from Enterprise and Employment to Existing to Existing Residential (RES). In furtherance of same, I would welcome if any members of the Council would visit the Estate in order to investigate the matter further and to observe the facts that have been averred to in these Submissions.