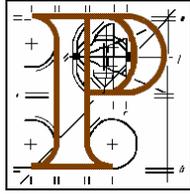


An Bord Pleanála



Inspector's Report

PL27.238096

PROPOSED DEVELOPMENT: House, detached garage and all associated site works.

LOCATION: Ballinglen, Arklow, Co. Wicklow

PLANNING APPLICATION

Planning Authority (P.A.): Wicklow County Council

P.A. Reg. Ref.: 10/2791

Applicant: Eileen Doyle

Type of Application: Permission

P.A. Decision: Grant

PLANNING APPEAL

Appellant: An Taisce

Type of Appeal: Third

Site Inspection: 21st February 2011

Inspector: Una Crosse

1. THE SITE

1.1 The site, which measures 0.531 hectares, is part of a larger holding owned by the applicant's family which is 77 hectares in area. The site is steeply sloping rising over ten metres from the public road to the back boundary. The remainder of the field within which the site is located continues to slope to the north. The site boundary has been set out with a timber post fence. There is a large holding with public house located on the roadside to the west of the site. A large dwelling set back from the public road, Ballinglen House is located to the south of the site.

2. PROPOSED DEVELOPMENT

2.1 Development as Submitted

2.1.1 The proposed dwellinghouse extends to 376 sq.m with the detached garage a further 68 sq.m. A dormer style dwellinghouse is proposed with a ground floor plan of 268 sq.m in area and a first floor plan of 108 sq.m. Additional landscaping is proposed with a landscape plan included. Water supply is proposed via a bored well. A biocycle secondary treatment packed with tertiary polishing filters is proposed. The 'T' test result was 3.56 and 'P' test was 12.17. The application was accompanied by documentation relating to the applicants connection to the area.

2.2 Amendments made at Further Information

2.2.1 A revised garage design was submitted with an area of 49.73 sq.m. A revised layout plan was submitted providing for the disposal of surface water from the driveway by way of a soakaway. Amendments were also made to the polishing filters to comply with the EPA code.

3. DECISION OF THE PLANNING AUTHORITY

3.1 Decision

Wicklow County Council decided to grant permission for the proposal subject to 17 conditions which include the following:

- Occupancy condition (No. 2);
- Works to the roadside boundary to provide sightlines of 80 metres in each direction (No. 4);
- Details of the soak pits to be submitted for written agreement of the planning authority (No. 5);
- Gradient of the driveway not to exceed 1 in 40 for a minimum distance of 6 metres from junction with public road (No. 6);
- Details of redesign of effluent treatment system for population of 12 persons to be submitted (No. 7);
- House to be constructed in accordance with section submitted on 26th October 2010 (no. 12);
- Existing shrub and tree vegetation except that strictly required for the development to be retained (No. 13);
- Tree planting and landscaping scheme to be submitted (No. 14);

3.2 Technical Reports

3.2.1 The **planner's first report** refers to the pre-planning undertaken (Ref. 10/57) wherein the applicant was advised of the Board's refusal and advised to re-site the dwelling close the existing buildings and family home. It is considered that the applicant qualifies under the rural housing policy. Considered proposal is contrary to section 6.4.3 of Chapter 6 and design is not considered to be in keeping with the adjacent buildings nor is it conducive to the rural area or characteristics of the site. Proposal would not assimilate or integrate into the landscape and would form an incongruous feature on the rural landscape and set an undesirable precedent. Reference is made to the recommendations made to the applicant regarding re-siting. The revisions made to the design are not sufficient as subject site is not suitable and the design is considered to be more suitable to a suburban area. Scale of the garage is considered excessive. Provision of 90m sightlines would necessitate the removal of significant amount of indigenous road side boundary. Site is not considered suitable for development given its open and elevated nature and the design is not conducive to the site nor in keeping with adjoining built form. Refusal is recommended for 2 reasons. The first is as per the An Bord Pleanála refusal and the second relates to traffic hazard relating to the absence of surface water onto the public road. **Area Engineer** requested further information be submitted to demonstrate how surface water from the entire site would be intercepted and disposed of on site. **EHO** no objection subject to polishing filter distribution laterals to be 0.6m apart and not as submitted with full details to be submitted for agreement prior to commencement.

3.2.1 The **Director of Services** included a handwritten note on the Planner's report which refers to notes made on the previous file and states that the planners assessment is noted as is the ABP analysis on the previous application but it is considered that clustering the house with the pub and existing residence would have a greater visual impact due to the screening afforded the site by the hedge to the north east and the trees on both sides of the road to the south east. The house type is not inconsistent with houses granted permission along the road in the past 10 years and its 6.5 metre height makes it less obtrusive from views. The gable windows in the southwest gable would needlessly make the dwelling more obtrusive and should be omitted in any grant. The surface water issues and size of the garage should be addressed by further information. A request for further information was prepared by the Planner relating to the size of the garage, the surface water and details relating to the polishing filters. It is noted that further revisions were required by the EHO in respect of the distances to the polishing filters and compliance with the EPA code of practice. The response was considered acceptable and permission was recommended.

3.3 Consultations and Submissions

3.3.1 **An Taisce** refer to matters which may be considered in the determination of the application such as the rural housing and amenity provisions of the Development Plan, Rural housing provisions of National Spatial Strategy and

Sustainable Rural Housing Guidelines and the impact of the proposed effluent treatment system and its compliance with the EPA code of practice and the EU groundwater directive.

4. PLANNING POLICY & GUIDELINES

4.1 Wicklow County Development Plan 2010-2016

4.1.1 The subject site is located within an area characterised in the plan as a landscape 'Area of special amenity'. Landscape characterisation is set out in section 17.9.1 of the Plan. Areas of special amenity are stated to have a high vulnerability. Schedule 17.9 includes the prospects of special amenity value or special interest and these are included on Map 17.11. Prospect 54 is R747 Holts Way at Coolalug, Mucklagh, Tomnaskela and Kilpipe which is described as a prospect across Derry Water River and towards South Wicklow Mountains. Objective VP1 relates to views and prospects. Chapter 6 sets out the policy in relation to rural housing and development. Houses in the countryside (level 10) are set out in section 6.3.2 with objective RH14 setting out the circumstances required for compliance. There are 16 provisions for compliance. Design standards for houses in the open countryside are set out in section 6.4.3 of the Plan and include siting, orientation and design.

4.2 Sustainable Rural Housing Guidelines for Planning Authorities, Department of the Environment, Heritage and Local Government, April 2005.

4.2.1 The site of the proposed development is located within an 'Area under Strong Urban Influence', as indicated in the Sustainable Rural Housing Guidelines for Planning Authorities. In relation to such areas, Appendix 3 recommends (inter alia) that key development plan objectives in these areas should be, on the one hand, to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

5. RELEVANT PLANNING HISTORY

5.1 Subject Site

Ref. 09/119 – PL27.234652 – Permission for a house, garage and ancillary site development works including biocycle treatment system refused permission by the Board on appeal for the following reason:

The site of the proposed development is located in a landscape identified in the current Wicklow County Development Plan as an 'Area of Special Amenity' due to the unspoilt nature of the undulating hills and valleys. The proposed development would be located in an elevated position within the landscape, isolated from established development. The proposed dwelling, which would entail a considerable extent of excavation, is of a scale and unsympathetic design which would result in a visually obtrusive development and would detract from the landscape to an unwarranted degree. The proposed development would, therefore, be contrary to the policies for the siting and design of new houses, as detailed in paragraph 8.3 of the current

Development Plan for the area, to protect the landscape and encourage traditional house design in the rural landscape, would seriously injure the amenities of the area and would, therefore, be contrary to the proper planning and sustainable development of the area.

Ref. 07/2716 – application for house withdrawn.

6. GROUNDS OF APPEAL

The **third party** grounds of appeal are summarised as follows:

- Proposal would contravene provisions of the Wicklow County Development Plan 2010-2016 for development located in areas of special amenity;
- Site affects listed prospect number 15 which runs along the R747;
- Applicant has failed to provide evaluation of less sensitive alternatives;
- Applicant advised in Ref. 10/57 of refusal reason from the Board under Ref. 09/119 and to move dwelling closer to family home;
- Previous application Ref. 07/2716 was withdrawn;
- Neither applicant nor Planning Authority have addressed or resolved grounds of previous refusal (ref. 09/119);
- While stated applicant complies with previous rural housing policy SS9 it is not clear why as applicant owned house up to 2009 in Dublin 15;
- Design revisions do not address or resolve the fundamental location suitability of the site in the first instance;
- Planning Officer recommended refusal which was endorsed by Senior Executive Planner;
- Sought copy of all relevant reports from Wicklow County Council upon which decision was based but have not received same;
- Recommend that expenses be awarded against Wicklow County Council under s.145 of Planning Act as amended as Council have acted in contempt of the status of the board in considering a repeat application;

7. RESPONSE TO APPEAL

7.1 Response from Planning Authority to Appeal

The response from the planning authority states as follows:

- An Taisce have been given the link to all the scanned documents on the site including the report of the Director of Services;
- Director of Services report is provided in type;
- Notes referred to by the Director of Services on the previous application will be on the file held by the board;
- Ample explanation provided for the basis of the Director of Services decision to overturn planner's recommendation;
- Planning authority not bound by the Boards decision unless Res Judicata comes into play and not bound by opinion in the Inspector's reports;
- Proposal has a radically different house type and planning authority entitled to its own conclusions based on proposals before it;

- Wicklow County Council always tries to factor in the Boards decisions and approach but must make its own decision based on proper planning and sustainable development;
- Decision was not frivolous or arbitrary and not taken mala fides and no clear basis to award expenses;

7.2 Response from First Party to Third Party Appeal

The response from the applicant to the third party appeal is summarised as follows:

- Applicant complies with objective RH14 of the Development plan relating to rural housing and currently lives in the area;
- Site gifted by late father and is located in one of lowest points in the holding along the public road and is not elevated;
- Site chosen because of significant natural screening provided by existing trees;
- Prospect of special interest No. 54 directly impacts on family holding with proposal adequately screened from the listed prospect;
- Relocating towards family home would make proposal clearly visible from the R747 and contravene objective VP1 of the Plan ;
- Contrary to the Boards concern site is not elevated and is one of lowest points in landscape context;
- Border delineating area of special amenity and rural area in the plan is along the public road;
- True spirit of the area of special amenity related more to the elevated areas as you climb away from the public road towards the mountains;
- Proposal herein for an entirely different house type with limited cut into the landscape with Board's concerns adequately addressed;
- House located further down the sloping contours than previously proposed with a significant reduction in the height of the house;
- Siting of the house is compliant with Section 6.4.3 of the Plan as it is nestled into the landscape with conditions of notification requiring retention of existing screening and provision of further planting;
- Imperative that applicant's home is near family home and business to allow care for elderly mother and management of licenced business;
- Consider appellants arguments unsupported and question objectivity as objections do not reflect the facts and addressed concerns of Council;
- Applicant considers proposal is last chance to secure a home in Ballinglen as no better site exists;
- Applicant provides a table rebutting the appellants grounds of appeal the arguments for which are contained in the summary above;
- Site location considerations with views from R747 provided in Appendix 2;
- Supporting documentation demonstrating applicant's connection with the area also included;

8. ASSESSMENT

8.1 Introduction

8.1.1. Prior to addressing the assessment of the proposed development I would note that the applicant considers the appellant's grounds of appeal to be unsupported and without foundation. It is stated that they do not reflect the facts as the concerns of the Council have been addressed. There are a number of instances in the appeal where the applicant states that the appeal is vexatious. I would note that the appellant has made a valid appeal to the Board in relation to the notification of decision issued by the planning authority and the Board are required to consider same on its merits. Furthermore, I note in the table set out by the applicant in Appendix 1 – lack of grounds of appeal – that it is stated in the rebuttal to the statement that the report of the Assistant Planner recommending refusal suggests that refusal was recommended on the basis of concerns regarding surface water. The applicant is not correct on this matter as the first planning report recommends refusal for two reasons the first one being the visual impact of the proposal on the landscape. In relation to compliance with housing policy, I consider that the applicant complies with the rural housing policy set out in the Plan and I do not consider that an assessment of same is necessary.

8.1.2 Having inspected the site and reviewed the documentation on the file including the planning history, it is my view that the key planning issues in this case are as follows:

- Visual Impact
- Other Matters

8.2 Visual Impact

8.2.1 The visual impact of the proposed development on the landscape is the central consideration in my opinion and I would note was the reason for refusal in the previous application. The area of special amenity is described in the Development Plan as having a high vulnerability. The plan states that these areas while not as vulnerable or as sensitive as those areas in the AONB are still subject to pressure for development which could result in a serious deterioration of the landscape quality. Therefore the Development Plan requires in my opinion that the proposals on sites located within the area of special amenity do not result in a serious deterioration of the landscape quality. Furthermore, the matter of precedent is of significance given that the site is located within a family holding. Any proposal on the subject site could, set a precedent for further development on the holding and this is a matter which requires consideration in the context of the consideration of visual impact.

8.2.2 The applicant's contention that the site is not elevated is in my opinion unjustified. The site is elevated and is clearly visible from the R747. The site climbs steeply from the road and the slope is clearly evident from the gradient of the timber fence that has been constructed around the site. The fact that the site in question may be the lowest part of the holding does not translate into the site not being elevated and is not a reasonable justification, in my opinion. Furthermore, I do not agree with the applicant's interpretation

of the area of special amenity. It is stated that the true spirit of the area of special amenity relates more to the more to the elevated areas as you climb towards the mountain. I do not agree. The landscape in question does climb from the public road and does so quite steeply. The appeal site is a critical part of the visual setting of this landscape and is highly visible from the R747 and the prospect of special interest designated in the Development Plan.

8.2.3 The previous reason for refusal stated that the *“proposed dwelling, which would entail a considerable extent of excavation, is of a scale and unsympathetic design which would result in a visually obtrusive development and would detract from the landscape to an unwarranted degree”*. In this regard the tests for the consideration of a new application on the site should have addressed these matters notwithstanding the planning authority’s opinion in respect of the repeat application. The proposal still entails a considerable extent of excavation which is outlined in the section contained on the site layout plan with up to 2.5 metres in depth of the site removed to the rear of the proposed site. It would create a considerable scar on this elevated site and would impact adversely on this special landscape. The house is excessive in scale for a sensitive site comprising a gross floor area of 376 sq.m over two levels albeit that the first floor is less than half the size of the ground floor. While the height of the structure has been reduced the house is still of a considerable height on this elevated sloping site. The garage was equally excessive in scale prior to the further information. In my opinion the design of the house was not dictated by the constraints presented by the site. The design is bland and is not in any way vernacular to the area. The front elevation is of a considerable length with a fenestration which incorporates two gable fronted projections which creates additional bulk but the fenestration would be even more bland in the absence of same.

8.2.4 Finally in relation to the screening which both the applicant and the Director of Services consider will screen the house from view, I would note that apart from a few trees the remainder and majority of the trees which are stated to screen the site are located at the entrance and along the driveway of Ballinglen House. They are therefore on third party lands and the applicant has no control as to their longevity or replacement. Furthermore, the house is positioned to the west of the driveway upon which the trees are located and in my opinion the position of the house would provide that the third party trees would not screen the proposed structure, particularly given its length. Additionally, I do not consider the applicant has appropriately examined alternative sites on the holding particularly in the vicinity of the applicant’s family home with the applicant’s response to the appeal concentrating on the exposed ground to the east. Clustering the dwellinghouse in the vicinity of what is an extensive set of structures should have been addressed in my opinion. The subject site has been set out to accommodate the development of a dwelling and I do not consider that an objective assessment of alternative sites has been undertaken. In this regard, I do not consider that the applicant has addressed the previous reason for

refusal relating to the visual impact of the proposal and the fundamental concerns expressed by the Board still remain.

8.3 Other Matters

8.3.1 The matters raised relating to surface water and public health have been addressed in the further information request or could be conditioned in respect of the polishing filters. The garage has been reduced in scale. The appellants request expenses against the planning authority under section 145 of the Planning and Development Act, 2000 as amended. This is a matter for the Board to consider.

9. CONCLUSION AND RECOMMENDATION

9.1 The dwelling as proposed is a very large dwelling located on a sensitive sloping site dependent on partial screening from a third party property. The development requires considerable excavation of the existing site which is sensitive, elevated and exposed. I do not consider that the applicant has addressed the reason for refusal in the previous Board decision nor has an objective visual assessment of alternative sites been carried out. I therefore recommend that permission is refused for the development as proposed for the reasons and considerations set out below.

REASONS AND CONSIDERATIONS

The site of the proposed development is located in a landscape identified in the current Wicklow County Development Plan as an 'Area of Special Amenity' which is stated in the plan to have a high vulnerability. The proposed development would be located in an elevated position within the landscape on an exposed sloping site, isolated from established development. The proposed dwelling, which would entail excavation of an exposed site, is of an inappropriate scale and unsympathetic design and would result in a visually obtrusive development resulting in a serious deterioration of the landscape quality. The proposed development would, therefore, be contrary to the policies for the siting and design of new houses, as detailed in paragraph 6.4.3 of the current Development Plan for the area, which seeks to emphasise the need for sensitive development in rural area in the siting and design of one off housing. Furthermore, the proposal would adversely impact on the designated prospect of special amenity or special interest No. 54 and would form an obtrusive and incongruous feature in this view and would, therefore, contravene Objective VP1 of the Development Plan. The proposed development would therefore, seriously injure the amenities of the area, would set an undesirable precedent for further development in the immediate area and would, therefore, be contrary to the proper planning and sustainable development of the area.

Una Crosse

Senior Planning Inspector

Date: February 2011