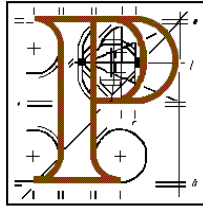


An Bord Pleanála



Inspector's Report

PL27.244282

DEVELOPMENT:- Retention of dwelling, double garage, treatment unit and driveway at Kilcrouney Lane, Kilcrouney, Bray, Co. Wicklow.

PLANNING APPLICATION

Planning Authority: Wicklow County Council
Planning Authority Reg. No: 14/1911
Applicant: Paul Walsh
Application Type: Permission
Planning Authority Decision: Refuse

APPEAL

Appellant: Paul Walsh
Type of Appeal: 1st-v-Refusal
DATE OF SITE INSPECTION: 25TH March 2015
Inspector: **Colin McBride**

1. SITE DESCRIPTION

- 1.1 The appeal site, which has a stated area of 0.4431 hectares, is located to the south west of Bray and on the western side of the N11. The site is in a rural area and is occupied by an existing single-storey dwelling. The site is accessed from an existing laneway that emanates from the L-1001-0 to the south of the site. To the north of the site is an existing dwelling which is the only other dwelling apart from that on the appeal site served by the existing laneway. The lands to the south and east of the site are agricultural lands.

2. PROPOSED DEVELOPMENT

- 2.1 Permission is sought for the retention of a single-storey dwelling, double garage, driveway and wastewater treatment system.

3. LOCAL AND EXTERNAL AUTHORITY REPORTS

3.1

- a) Planning report (20/11/15): The planning history of the site is noted. As the proposal is for retention it was to be assessed as a new dwelling and there is the requirement to comply with rural housing policy. It is noted that the sale of the dwelling was not in accordance with the provisions of Condition 3(b) of ref no. 03/8873 and the applicant has failed to demonstrate compliance with Rural Housing policy (Objective RH14). It was noted that condition no. 8 required improvement of sightlines at the junction of the private access road and the public road prior to the commencement of development and this condition was not complied with. Refusal was recommended based on the reason outlined below.

4. DECISION OF THE PLANNING AUTHORITY

4.1 Permission refused based on two reasons....

1. Having regard to:

- (i) The rural location of the subject site;
- (ii) The settlement strategy of the County Development Plan which in accordance with Objective RH14 of Chapter 6, Rural Housing & Development restricts rural housing development to cases where there is a bona fide necessity to live in the rural area;
- (iii) The planning history of the subject site in particular register Reference 03/8873.

It is considered that the applicant would not come with the provisions of those persons that would qualify under the rural settlement strategy and the dwelling was not sold by the mortgager in possession. Therefore to permit retention of the dwelling, would undermine rural settlement strategy of the County Development Plan, would be contrary to Planning register reference 03/8873 and to the proper planning and sustainable development of the area.

2.The proposed development would endanger public safety by reason of serious traffic hazard because:

- a) The junction of the L-1001-0 local road with the cul de sac is seriously substandard and upgrade proposals required by previous permission have not been implemented;
- b) The entrance to the subject site by reason of the height and position of the splayed walls which results in restricted sightlines.

5. PLANNING HISTORY

- 5.1 05/3840: Permission granted for revision of permission ref no. 03/8873.
- 5.2 04/1204: Permission refused for revised dormer dwelling with septic tank.
- 5.3 03/8873: permission granted to Ross Kelly for dwelling, septic tank and detached garage.

6. PLANNING POLICY

- 6.1 The relevant plan is the Wicklow County Development Plan 2010-2016. The site is located in rural area.

Chapter 6: Rural Housing and Development: Section 6.3.3:

Objective RH14: Residential development will be considered in the countryside only when it is for the provision of necessary dwelling in a number of listed circumstances. (list attached)

- 6.2 Sustainable Rural Housing Guidelines
Area under Strong Urban Influence

Rural areas under strong urban influence. These areas will exhibit characteristics such as proximity to the immediate environs or close commuting catchment of large cities and towns, rapidly rising population,

evidence of considerable pressure for development of housing due to proximity to such urban areas, or to major transport corridors with ready access to the urban area, and pressures on infrastructure such as the local road network.

7. GROUNDS OF APPEAL

7.1 A first party appeal has been lodged by O’Caoimh & Associates on behalf of Paul Walsh. The grounds of appeal are as follows...

- The appeal submissions outlines the background to this case including enforcement issues concerning the expiry of the original permission and level of works carried out on the dwelling at the time of the expiry of the permission.
- The appeal submission outlines the fact that the dwelling/site was sold to the current applicant/appellant as a distressed property and outlines the financial history of the development.
- The appeal submission notes the difficulty there was in finding a buyer for the property given the partially completed state of the dwelling and the difficulty in finding a suitably qualified individual in the context of Wicklow County Development Plan Rural Housing Policy.
- The appeal submission notes condition 3(b) under the grant of permission 03/8873 which states that

“the Planning Authority will consent to any sale of the completed dwelling by a lending institution in exercise of its powers as Mortgager in possession of this property, and likewise consent to any sale by a person deriving title from this lending institution”.

- The appellants argument is that the terms of condition 3(b) apply due to the financial history of the site and consider that the Council has been unreasonable in the interpretation of this condition in the context of the current applicant/appellant.
- In regards to the splayed walls it is consider unreasonable to require modification of the boundary in the context that the road serving the site is a private driveway serving only two dwellings.
- In regards to the junction of Kilcroney Lane and the public road (L-100-0), it is noted that such has not changed since the grant of permission under 03/8873 and that improvement of the junction should not be an issue in this case and that works completed have been as per permission ref no. 03/8873.

- It is concluded that the issue of local qualification is unreasonable and punitive and counter the best interests of other houses in the area. It is noted that there was difficulty finding a suitably qualified buyer and that the current situation allowed for completion of an unfinished dwelling that was a concern for other residents in the area.

8. RESPONSES

8.1 No response.

9. ASSESSMENT

9.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Principle of the proposed development/planning history
 Development Plan Policy, National Policy, rural housing
 Physical impact, visual amenity, traffic safety, wastewater treatment
 Other Issues

9.2 Principle of the proposed development/planning history:

9.2.1 The proposal is for retention of a dwelling, garage, driveway and wastewater treatment system. Permission was granted on the site for a dwelling under ref no. 03/887. Based on the information on file it would appear that there were issues concerning enforcement relating to the expiry of the permission and the level of works carried out. The permission granted under ref no. 03/887 was to a Ross Kelly. Given the location of the site in a rural area and Rural Housing Policy under the Wicklow County Development Plan at the time, permission ref no. 03/887 was granted including the following condition.

Condition no. 3

(a) The use of the proposed dwelling shall be restricted to the applicant, or to other persons primarily employed or engaged in agriculture in the vicinity or to other such class of persons as the Planning Authority may agree to in writing. This requirement shall be embodied by a legal undertaking that shall be registered as a burden against the title of the land in the Land Registry or registry of Deeds and shall be of ten years duration from the date of this registration. Evidence of this registration shall be submitted to the Planning Authority within twelve months of the commencement of development on this site;

(b) The Planning Authority will consent to any sale of the completed dwelling by a lending institution in exercise of its power as Mortgager in possession of this property and likewise consent to any sale by any person deriving title from the lending institution.

Reason: To ensure that development in this area of high amenity is appropriately restricted, in the interests of proper planning and development and visual amenity.

Based on the information on file a partially completed dwelling was sold as a distressed property by a lending institution to the current applicant/appellant who completed the dwelling and has subsequently sought retention of said dwelling. Permission for retention of this dwelling was refused on the basis that the applicant would not qualify under the provision of Rural Housing policy set down under Objective RH14 of the Wicklow County Development Plan 2010-2016 as well as on the basis of traffic safety issues concerning the junction of the laneway and public road as well sightlines at the vehicular entrance onto the laneway.

9.2.2 The issues of traffic and general physical impact of the proposal is to be discussed in later sections of this report. The main issue raised by the appellants appears to relate to compliance with condition no. 3(b) of permission ref no. 03/887. The appellant is arguing that his situation in terms of purchasing of the site/partially completed dwelling on site falls under the terms of condition 3(b) and that the Planning Authority's interpretation of this condition is unfair. I think it is important to deal with this issue first in the interests of clarity. The appeal before the Board concerns the retention of a dwelling, garage, driveway and wastewater treatment system. It is incumbent on the Board to assess the proposal on its merits. The Board has no remit or authority to deal with the issue of compliance with a condition attached to a permission previously granted by the Local Authority. The Board is not the enforcement authority and has no powers or functions in terms of dealing with compliance issues. The only situation in which the terms of a condition attached to a permission is relevant to An Bord Pleanála is when such condition has been appealed under Section 139 of the Planning and Development Act, 2000 (as amended) and such has not been the case. In this regard the issue of whether condition 3(b) has been complied with is not a planning consideration under this appeal. The nature of the development sought is retention of a dwelling and such is what is being assessed in the context of relevant planning policy, and the proper planning and sustainable development of the area. These aspects of the proposed development are to be discussed in the following sections of this report.

9.3 Development Plan Policy, National Policy, rural housing:

9.3.1 The dwelling and associated works are located in a rural area. For the purposes of National policy set out under the Sustainable Rural Housing Guidelines, the site is located in an Area Under Strong Urban Influence. Under the County Development Plan the site is in an area where Objective RH14 applies. This objective states that "residential development will be

considered in the countryside only when it is for the provision of necessary dwelling in a number of listed circumstances”. This list (attached) includes a number of criteria including permanent native residents of the area, persons whose principle occupation is agriculture and who own lands in the immediate vicinity as well other categories. The applicant in this case has submitted no documentary evidence to demonstrate how he complies with the requirements of Development Plan policy and his main argument in favour of the proposed development relates to compliance with condition no. 3(b) of the previous permission granted on site under ref no. 03/8873. As noted above this condition is not a relevant planning consideration for the Board in assessing the proposal for retention of the dwelling and associated works on site. Having regard to such I would note that the applicant/appellant does not comply with Rural Housing Policy set down under Objective RH14 of the County Development Plan.

9.3.2 Having regard to the location of the site within an ‘Area under Strong Urban Influence’ as identified in the “Sustainable Rural Housing - Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government in April, 2005, and outside lands identified for residential development, and having regard to the policies of the planning authority as set out in the Wicklow County Development Plan, 2010 – 2016 relating to rural housing (Objective RH14), it is considered that the applicant does not come within the scope of the housing need criteria for a rural dwelling at this location. The proposed development would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and result in an undesirable precedent for further such development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

9.4 Physical impact, visual amenity, traffic safety wastewater treatment:

9.4.1 The proposal is for retention of a single-storey dwelling, garage, laneway and wastewater treatment system. Permission has been granted previously on this site for a dwelling under ref no. 03/8873. In terms of physical impact the dwelling for retention is acceptable in regards to the visual amenities of the area and the amenities of adjoining properties. The proposal entails retention of a proprietary wastewater treatment system. Site suitability test results indicate that the soil conditions on site are suitable for the operation of a wastewater treatment system.

9.4.2 The second reason for refusal relates to traffic issues with concerns about the sightlines at the vehicular entrance due to the scale and extent of the splayed walls either side of the entrance. The reason for refusal also related to the

lack of upgrading works to the junction of the access laneway and the L-100-0 that were part of a condition attached under permission ref no. 03/8878. In regards to the vehicular entrance serving dwelling, I would note that the site is located on a laneway that serves a small number of dwellings and is not a heavily trafficked laneway. I would be satisfied that there are sufficient sightlines available at the entrance as currently laid out on site. Having inspected the road network in the vicinity I would consider that sightlines at the junction of the laneway serving the site and the L-100-0 are of an acceptable standard. I am satisfied that the proposal for retention would be acceptable in the context of traffic safety and convenience.

9.5 Other Issues:

9.5.1 Having regard to the nature and scale of the proposed development and/or nature of the receiving environment and/or proximity to 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.

RECOMMENDATION

I recommend refusal based on the following reason.

REASONS AND CONSIDERATIONS

1. Having regard to the location of the site within an 'Area under Strong Urban Influence' as identified in the "Sustainable Rural Housing - Guidelines for Planning Authorities" issued by the Department of the Environment, Heritage and Local Government in April, 2005, and outside lands identified for residential development, and having regard to the policies of the planning authority as set out in the Wicklow County Development Plan, 2010 – 2016 relating to rural housing (Objective RH14), it is considered that the applicant does not come within the scope of the housing need criteria for a rural dwelling at this location. The proposed development, would contribute to the encroachment of random rural development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure and result in an undesirable precedent for further such development. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

Colin McBride
30th March 2015