

# An Bord Pleanála



## Inspector's Report

**Appeal Reference No:** PL27.245308

**Development:** Change of use (to remove cond. 4 of previous permission 92/7918) from permitted use (enurement clause) and retain house as constructed.

### Planning Application

Planning Authority: Wicklow County Council

Planning Authority Reg. Ref.: 15/430

Applicant: John & Sadie Cunningham

Planning Authority Decision: Refuse permission

### Planning Appeal

Appellant: John & Sadie Cunningham

Type of Appeal: First party

Date of Site Inspection: 4/11/15

**Inspector:** Siobhan Carroll

## **1.0 SITE LOCATION AND DESCRIPTION**

- 1.0.1 The appeal site is located at Barniskey East, Arklow, Co. Wicklow. The site is situated circa 4km to the north of Arklow and 5km to the south of Redcross. This area forms part of the upland area to the east of the Avoca River. The site is located on the 180m contour.
- 1.0.2 The property on site is a dormer detached dwelling with an area of 264sq m. There is a detached garage to the north of the dwelling with an area of 50sq m. The stated area of the appeal site is 0.58 hectares. The site is bounded by mature hedgerow and served by a 100m access drive off the local road to the west. There is a forested area to the east of the site which forms part of the overall landholding.

## **2.0 PROPOSED DEVELOPMENT**

Permission is sought for the change of use (to remove condition no. 4 of previous permission 92/7918) from permitted use (enurement clause) and retain house as constructed.

## **3.0 PLANNING HISTORY**

Reg. Ref. 92/7918 – Permission was granted to William Burke for a dwelling and septic tank.

Reg. Ref. 13/8838 – Permission was granted for retention of changes to the dwelling (granted under Reg. Ref. 92/7918) for 2 no. dormers to roof of dwelling.

## **4.0 PLANNING AUTHORITY DECISION**

### **4.1 Planning and technical reports**

#### **Internal Reports:**

Environmental Health Officer: Not recommended

#### **Submissions**

The Planning Authority did not receive any submissions in relation to the application.

#### **4.2 Planning Authority Decision**

The Planning Authority refused permission for the following reason.

1. The existing dwelling is located within an Area of Special Amenity, this is a landscape area which is subject to pressure for development, and where development is restricted to avoid a serious deterioration in the landscape quality. Accordingly to ensure the protection of this landscape it is the Council's settlement strategy policy to encourage further growth of existing settlements and to restrict rural housing development to cases where there is a bona fide necessity to live in the rural area instead of in an existing settlement. Thus the removal of Condition 4 of Planning Register Reference 92/7918 in the absence of evidence that the dwelling was occupied in accordance with this condition would be contrary to this strategy, would set a precedent for other similar applications, would lead to the erosion of the landscapes of Wicklow contrary to County Development Plan policy and to the proper planning and sustainable development of the area.

#### **5.0 GROUNDS OF APPEAL**

A first party appeal was submitted by Frank Ó'Gallaghóir on behalf of the appellants John & Sadie Cunningham on the 12<sup>th</sup> of August 2015. The content of the appeal submission can be summarised as follows;

- The applicants John & Sadie Cunningham returned to Ireland after living abroad and purchased the house and surrounding lands in November 1998. They were not aware of the occupancy condition. Condition no. 4 of Reg. Ref. 92/7918 which restricted the occupation of the house to the applicant and their heirs or other persons deemed suitable by the Planning Authority.
- The condition was not brought to their attention at the time of purchasing the property. Since becoming aware of the condition the applicants attempted to regularise the situation.
- The Planning Authority refused permission on the basis that there was a lack of evidence that the development was occupied in accordance with objective RH14 and that the development is contrary to the Development Plan rural housing policy.

- The appellants contend that the proposed development would have nil impact upon the proper planning and sustainable development of the area.
- The only substantive issue in consideration of this proposal is who the occupants of the house are.
- The applicants need to sell the property as they can no longer live in a two-storey property and also upkeep the gardens and forest.
- It is not a proper planning consideration to refuse to allow this house to be sold without the continuation of this occupancy restriction almost twenty three years after the house was completed and seventeen years after it was occupied by the current owners.
- A Commencement Notice was sent to Wicklow County Council in relation to the development on the 30<sup>th</sup> of November 1992. The dwelling was completed in 1993 and immediately occupied by William & Mary Burke until November 1998.
- A Section 38 agreement was submitted to Wicklow County Council and was agreed by Managers Order PD 8519/96 on the 6<sup>th</sup> of November 1996.
- The applicants John & Sadie Cunningham occupied the house from November 1998 for over seventeen years and the house has been occupied for twenty three years.
- It is recommended in the Sustainable Rural Housing Guidelines that occupancy conditions should not exceed seven years. Wicklow County Council's current standard occupancy condition now requires no more than seven years occupancy by a restricted class of person.
- Two precedent decisions of the Board are cited in the appeal. Under PL27.226114 permission was granted for the retention of a house on revised site boundaries and the removal of an occupancy condition in Killiskey Ashford, Co. Wicklow.
- Under PL27.244284 permission was granted to retain an existing bungalow without an occupancy condition and for permission for a new extension to the side of the dwelling at Coolmore, Arklow, Co. Wicklow. This site is located circa 7km north of Arklow and west of Brittas Bay.
- The Inspector in that case stated that the 'Sustainable Rural Housing Guidelines for the Planning Authorities' issued by the Department of the Environment, Heritage and Local Government (2005), provide for the attachment of an occupancy condition to require that the dwelling shall be

occupied by the applicant, members of the applicant's immediate family or by any other person who has similar links'.

- The Inspector further noted that the dwelling in that appeal case was constructed in 2001 and had been occupied by the applicant and his immediate family since that time. The Inspector considered that the general intention of the occupancy condition had been satisfied and that the period of occupancy had exceeded the ten year requirement of the original permission and the seven year period now required by Wicklow County Council and the guidance in the Sustainable Rural Housing Guidelines.
- The Board concurred with the assessment of the Inspector and considered that seven years would be an appropriate period for a planning condition restricting the occupancy of rural houses and having regard to the time period that had elapsed since the construction and occupation of the dwelling exceeded ten years it was not considered reasonable to extend the occupancy requirement further.
- The conclusions of the Board in that case are appropriate to the current appeal and particularly that the seven year period of occupancy restriction would have concluded fifteen years ago in 2000.
- It is requested that the Board consider the issues set out in the first party appeal and overturn the decision of the Planning Authority.

## **6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL**

### **6.1 Planning Authority response**

- None received

## **7.0 POLICY CONTEXT**

7.1 The operative plan for the area is the Wicklow County Council Development Plan 2010 - 2016.

- Section 6.3.4 refers to House in the Open Countryside
- Policy RH6 - Where permission is sought by an individual applicant for a dwelling in any of the settlements in Levels 6-9, the applicant will be required

to show compliance with objectives for that settlement set out in this chapter. Where permission is granted for a single house in any settlement in Levels 6-9, the applicant will be required to lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling for a period of 7 years in accordance with these objectives.

- Objective RH14 refers to residential development in the rural area and the criteria under which applicants will be assessed.

## **7.2 National Policy**

### **The Sustainable Rural Housing Guidelines for Planning Authorities, April 2005**

- Section 4.7 refers to occupancy conditions

## **8.0 ASSESSMENT**

Having regard to the above, and having inspected the site and reviewed all documents on file, the following is my assessment of this case. Issues to be considered in the assessment of this case are as follows:

- Principle of development and removal of occupancy condition
- Appropriate Assessment

### **8.1 Principle of development and removal of occupancy condition**

8.1.1 It is proposed to the change of use (to remove condition no. 4 of previous permission 92/7918) from permitted use (enurement clause) and retain house as constructed.

8.1.2 The dwelling and septic tank effluent treatment system on site was granted permission under Reg. Ref. 92/7918 to William Burke subject to 10 no. conditions. Condition no. 4 specified that;

4.

- a. *The use of the proposed house shall be restricted to use by the applicant, his/her heirs, persons employed or engaged in agriculture or forestry in the vicinity, or other such class of persons, as the Planning Authority may agree in writing. No development shall commence until an agreement embodying this provision has been entered into with the*

*Planning Authority, pursuant to Section 38 of the Local Government (Planning and Development) Act, 1963. This agreement shall be registered as a burden against the title of the land in the Land Registry or Registry of Deeds. Evidence of this registration shall be submitted to the Planning Authority within 12 (twelve) months of the commencement of development on the site.*

- b. The Planning Authority will consent to any sale of the property by a lending institute in exercise of its powers as Mortgagee 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.*

- 8.1.3 William & Mary Burke occupied the dwelling from when it was completed in 1993 until November 1998. They submitted a Section 38 agreement to Wicklow County Council and it was agreed by Managers Order PD 8519/96 on the 6<sup>th</sup> of November 1996. This agreement restricted the occupancy of the dwelling in perpetuity and required that any future potential owner/occupants to be subject to written agreement by the Planning Authority. In November 1998 the property was purchased by the applicants John & Sadie Cunningham and they have lived there for the past seventeen years.
- 8.1.4 The site at Barniskey East, Arklow, Co. Wicklow is located in an area where Objective RH14 now applies under the provisions of the Wicklow County Council Development Plan 2010 – 2016. Objective RH14 of the Wicklow County Plan allows for the consideration of residential development in the countryside where, inter alia, it is for the provision of a dwelling for a permanent native resident. A permanent native resident is defined as a person 'either born and reared in the family home in the immediate vicinity of the proposed site, or (who has) resided in the immediate environs of the proposed site for at least 10 consecutive years prior to the application for planning permission.'
- 8.1.5 Policy RH6 of the Development Plan refers to occupancy and requires where permission is granted, that the applicant lodge with the Land Registry a burden on the property, in the form of a Section 47 agreement, restricting the use of the dwelling for a period of 7 years to the applicant, or to persons who fulfil the criteria set out in Objective RH14 or to other such persons as the Planning Authority may agree in writing.



- 8.1.6 The 'Sustainable Rural Housing Guidelines for the Planning Authorities' issued by the Department of the Environment, Heritage and Local Government (2005), provide specific guidance in relation to occupancy conditions. Section 4.7 refers to occupancy conditions and recommends that wording be used in conditions such that the dwelling shall be occupied by the applicant, members of the applicant's immediate family or by any other person who has similar links'. Appendix 1 of Guidelines indicates that seven years would be an appropriate period for such an occupancy condition.
- 8.1.7 Two decisions of the Board are cited in the appeal, PL27.226114 and PL27.244284. The cited cases are similar to the current case as both refer to rural dwellings in Wicklow. The first PL27.226114 refers to a dwelling at Killiskey Ashford, Co. Wicklow where permission was granted by the Board for revised site boundaries and removal of condition 2 on Reg. Ref. 99/636 which restricted occupancy. The second PL27.244284 refers to a dwelling at Coolmore, Arklow, Co. Wicklow where permission was granted by the Board for change of use (the removal of condition number 2 of a previous grant of permission, planning register reference number 00/2832), from the permitted use as a bungalow and connection to existing treatment plant, which restricted its occupancy and also permission was granted to retain the house as constructed and an extension to the side of the existing house.
- 8.1.8 Condition no. 2 of Reg. Ref. 00/2832 restricted the occupancy of the dwelling for a period of ten years while condition no. 4 of Reg. Ref. 92/7918 the original permission of the subject case restricted the occupancy of the dwelling to permanent native residents in perpetuity. Under PL27.244284 the Board agreed with the recommendation of the Inspector that permission should be granted for the change of use with the removal of no. 2 of Reg. Ref. 00/2832 on the basis that the occupancy of the dwelling had exceeded the required ten years under Reg. Ref. 00/2832 and that both the current Wicklow County Development Plan and the Sustainable Rural Housing Guidelines require Section 47 agreements for a period of seven years.
- 8.1.9 The subject dwelling was constructed in 1993 and was occupied by the original applicants for the first five years and subsequently has been occupied by the current applicants John & Sadie Cunningham. Having regard to the length of time which has passed since the construction and occupation of the dwelling over twenty three years and the provisions of both the Sustainable Rural Housing Guidelines for Planning Authorities and the current County Development Plan specifically policy RH6, which requires Section 47 agreements for a period of seven years, and the cited previous Board decisions, it is not considered reasonable that occupancy be further restricted given the significant changes in policy and guidance in relation to the time restriction on the occupancy of rural dwellings.

8.1.10 Having inspected the site and reviewed the documents and plans on file I would consider that the retention of the dwelling as built would be acceptable in principle. I note the report of the Environmental Health Officer dated the 26<sup>th</sup> of May 2015 in relation to the existing effluent treatment system. It is stated in the report that the treatment system is designed and sized for a population equivalent of 7 and that there are 5 bedrooms in the house and that if the garage is fitted with sanitary facilities that the overall development would be sized too large for the treatment system. Notwithstanding the recommendation of the Environmental Health Officer it appears that the existing effluent treatment system is operating satisfactorily and serves the property effectively.

## **8.2 Appropriate Assessment**

8.2.1 The site is located circa 3.5km to west of the Buckronev-Brittass Dunes and Fen SAC Site Code 00729. Having regard to the established residential use of the site, the nature of the proposal and separation distance 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.

## **9.0 CONCLUSIONS AND RECOMMENDATION**

9.0.1 I have read the submissions on file and visited the site. Having due regard to the provisions of the Development Plan, having regard to the nature and scale of the development proposed, the particular circumstances of the case, the planning history on the site, the Sustainable Rural Housing Guidelines, and the pattern of development in the vicinity of the site, I recommended that permission be granted for the following reason.

## REASONS AND CONSIDERATIONS

The “Sustainable Rural Housing Guidelines for Planning Authorities” issued by the Department of the Environment, Heritage and Local Government (2005) indicate in Appendix 1 that seven years would be an appropriate period for a planning condition restricting the occupancy of rural houses. The subject house was constructed and occupied under planning register reference number 92/7918, condition 4 of which restricted the occupancy of the house in perpetuity to the applicant, or to certain other persons by written agreement with the planning authority. Having regard to the time period that has elapsed since the construction and occupation of the house, exceeding twenty three years, and the provisions of the said Guidelines and the provisions of the current Wicklow County Development Plan specially policy RH6, which requires Section 47 agreements for a period of seven years, it is not considered reasonable that occupancy be further restricted. In the circumstances of the case, it is not considered appropriate to further restrict the occupancy of the dwelling. It is, therefore, considered that, subject to compliance with the conditions set out below, the proposed development and the development proposed to be retained would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health, would be acceptable in terms of traffic safety and convenience, would not set a precedent for similar such development, and would not be contrary to the proper planning and sustainable development of the area.

## CONDITIONS

1. The development shall be carried out and completed 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 prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. In all other regards, the development shall comply with the conditions attached to planning permission granted under planning register reference number 92/7918, with the exception of condition number 4 of that permission.

**Reason:** In the interest of clarity.

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**Siobhan Carroll,  
Inspectorate  
1<sup>st</sup> of December 2015**