



An
Bord
Pleanála

Inspector's Report

ABP-306561-20

Development	House, effluent disposal system, new entrance and associated site works.
Location	Newcastle Upper , Newcastle , Co. Wicklow
Planning Authority	Wicklow County Council
Planning Authority Reg. Ref.	19455
Applicant(s)	Chloe Madden
Type of Application	Permission
Planning Authority Decision	Grant
Type of Appeal	Third Party
Appellant(s)	Martin & Marie Keane
Observer(s)	None
Date of Site Inspection	14/03/2020
Inspector	Gillian Kane

1.0 Site Location and Description

- 1.1. The subject site refers to the rear (west) garden of an existing single storey-dwelling facing on to the country road Church lane / L50501-0 in Newcastle Upper, north Wicklow. The subject site is bound by a private lane to the south, to the north by the Appellants property and to the west by a greenfield. Despite the rural character of the area, there are a cluster of dwellings on the road leading south from the village of Newcastle.

2.0 Proposed Development

- 2.1. On the 30th April 2019, permission was sought for the construction of a split-level dwelling of 199.7sq.m on a site of 0.2h to the rear of her parents home. The planning application was accompanied by a percolation test report.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. On the 9th January 2020, the Planning Authority issued a notification of their intention to GRANT permission subject to 13 no. conditions. Condition no. 2 is an occupancy condition, condition no.s 4 and 5 refer to the roadside boundary and entrance. Condition no, 10 refers to FFL and condition no, 12 refers to landscape treatments.

3.2. Planning Authority Reports

- 3.2.1. **Environmental Health Officer:** Further information required, indicating the location of the wells serving adjoining dwelling. The existing septic tank serving the existing dwelling is unlikely to be operating satisfactorily. Applicant requested to consider upgrading the old system and submitting a fully completed site characterisation form.
- 3.2.2. Email from **Municipal District Engineer:** If no alternative entrance available, proposal is acceptable.
- 3.2.3. **Planning Report:** Principle of proposed development is acceptable. Notes the decision of the Board in ABP-301768-18 to refuse permission on traffic grounds. States that this application is different as the proposed development is on family lands and no alternative is available. Applicant complies with policy objective HD21 as has been living in the area for approx. 16 no. years. No visual impact, no overlooking or negative impacts on property to the north or west. No requirement for

additional landscaping. Applicant should be requested to indicate that the proposed entrance has been designed to avoid vehicular conflicts and whether the closure of the existing entrance is part of the proposal. Further information on waste-water treatment required.

3.2.4. Further information was requested on the 14th of June 2019. The applicant responded to the request on the 7th of November 2019. The items of FI were addressed as follows:

- Revised entrance details,
- location of existing WWTS and disposal systems nearby
- options for upgrading the existing WWTS subject to the requisite permission
- details of 2 no. aquacell soakway drainage systems
- site section drawing.

3.2.5. The applicant was advised that the above constituted significant further information and required revised public notices. The FI was re-advertised in November and December 2019.

3.2.6. **Second Planning Report:** Response to FI addresses the concerns of the Planning Authority. Recommendation to grant permission subject to conditions.

3.3. **Third Party Observations**

3.3.1. Concerns raised include the impact on the adjoining properties, landscaping, public health and traffic hazard.

4.0 **Planning History**

4.1.1. Planning Authority reg. ref 17/1362: Planning permission REFUSED for a dwelling on the grounds of lack of information.

5.0 **Policy Context**

5.1.1. Under the **Wicklow County Development Plan 2016 – 2022**, the site is located within Newcastle which is defined as a Level 6 Settlement – Rural Town. These are settlements with a good range of infrastructural services and have ‘the potential to consolidate rural development needs’ such as schools, shops etc. The following is relevant to this application/ appeal:

'Single house development: Applicant / purchaser of any new home must be either a resident for at least 3 years duration in County Wicklow or in permanent employment for at least 3 years duration in County Wicklow prior to making of application / purchase of new house'.

5.1.2. Objective WI7 of Chapter 9 – Infrastructure, is relevant to this development and states that permission will be considered for private wastewater treatment plants for single rural houses where:

- *the specific ground conditions have been shown to be suitable for the construction of a treatment plant and any associated percolation area;*
- *the system will not give rise to unacceptable adverse impacts on ground waters / aquifers and the type of treatment proposed has been drawn up in accordance with the appropriate groundwater protection response set out in the Wicklow Groundwater Protection Scheme (2003);*
- *the proposed method of treatment and disposal complies with Wicklow County Council's Policy for Wastewater Treatment & Disposal Systems for Single Houses (PE ≤ 10) and the Environmental Protection Agency "Waste Water Treatment Manuals"; and*
- *in all cases the protection of ground and surface water quality shall remain the overriding priority and proposals must definitively demonstrate that the proposed development will not have an adverse impact on water quality standards and requirements set out in EU and national legislation and guidance documents.*

5.2. **Newcastle Settlement Plan 2016 – 2022** forms part of the Wicklow County Development Plan. The subject site is located within a 'Secondary Development Area'. The Secondary Zone Vision is 'To provide for the sustainable development of a mix of uses including residential, employment, community and recreational uses that provide for the needs of the existing settlement and that allows for the future growth of the settlement'. Relevant Objectives are:

- Allow for the limited extension or 'spill-over' of the primary lands onto the secondary lands which immediately adjoin the boundary of the primary lands.

New development of this type should be compatible with or reinforce the function of the primary lands and shall be visually and physically linked with the primary core. No development will be permitted that prejudices the viability and function of the primary lands.

- In existing residential areas, it shall be an objective of the Council to protect existing residential amenity and to provide for infill residential development at a density and design that reflects the established character of the area in which it is located.
- Allow for new residential developments, including a mix of residential options within an attractive and accessible setting, at appropriate locations which have safe access to the public road network, which have pedestrian links to the primary lands, and which are served by appropriate water and sewerage infrastructure, and which, if possible are in proximity to community and public services.
- Promote densities in the order of 15 dwelling units per hectare. A higher or lower density may be considered appropriate, having regard to the context of the site and the prevailing density in the vicinity of the site.

5.3. EIA Screening

- 5.3.1. Having regard to nature of the development comprising the construction of a single dwelling on the outskirts of a village, it is considered that 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.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. An agent for the adjoining dwelling to the north, Martin & Marie Keane, has submitted a third-party appeal against the decision of the Planning Authority to grant permission. The grounds of the appeal can be summarised as follows:
- The proposed dwelling is essentially two-storey, with a gross floor area of 200sq.m.

- The proposed dwelling is similar to that previously withdrawn from Wicklow County Council.
- Proper planning principles require houses to face with the long axis onto public roads. These conventions relate to visual amenity and the provision of private open space to the rear. The proposed layout is unconventional and contrary to good planning practice. Inadequate private open space has been proposed.
- The proposed dwelling at only 5m from the boundary is seriously injurious to the residential amenity of the appellants dwelling. The appellants dwelling is 2m below the FFL of the proposed dwelling as ground levels fall from the south-west corner of the site to the north-east.
- Condition no. 10 which allows the FFL of the proposed dwelling as per the FI request, is unsatisfactory as it does not permit the involvement of the appellant.
- The appellants photos show that the proposed dwelling will tower over the appellants dwelling. It will block the light from their kitchen.
- The height of the poles erected on site has not been professionally certified.
- The proposed two-storey dwelling has windows facing over the clients house and garden. The lack of appropriate boundary treatments exacerbates these impacts.
- The proposed dwelling 20m to the south of the appellants property will overshadow their private garden and reduce daylight. The ridge level of the dwelling will be 8m above the appellants kitchen.
- The proposed dwelling should be relocated further to the east and south.
- The proposed house design is unsympathetic and out of character with the area.
- Insufficient detail of the existing and proposed boundaries have been submitted. The existing boundary between the two sites is an old overgrown shrubby field boundary. Condition no. 12 does not require a constructed boundary between the two properties. The Board is requested to attach a condition requiring the retention of the existing foliage and the construction of a 1.8m high solid timber fence.

- The proposed percolation area is on ground approx. 2/3m above the appellants. There is the potential for effluent seepage towards the appellants property. The proposed system should be moved further away from the shared boundary and on lower land.
- The system serving the existing dwelling is very close to and uphill of the appellants property. The system is considered by the EHO of the Council to be deficient and in need of upgrading. Upgrading the existing system has not been included in the proposal. The proposed development is therefore premature.
- In the absence of a site characterisation report and percolation tests, it is not possible to determine the size and adequacy of the polishing filter.
- The Board refused planning permission (ABP-301768-18) for a dwelling off Church Lane on the grounds of intensification of an existing access with inadequate sightlines and thus a danger to traffic safety. This is remarkably similar to the subject proposal.
- The Board is requested to comprehensively revise the design and layout, to provide for a single storey dwelling parallel to the laneway with a percolation area to the west of the house.

6.2. Applicant Response

6.2.1. The applicant has responded to the third-party appeal as follows:

- The Planning Authority fully considered the proposed development. Nothing new has been raised in the appeal.
- An earlier application was withdrawn due to lack of information.
- The appellants dislike of the proposed development does not mean it does not constitute proper planning.
- The proposed dwelling will be dug down. The proposed FFL is 0.5m higher than the appellants and is 17m from the appellants. Overlooking and overshadowing are not issues. All boundary hedging will be retained and reinforced.
- The proposed percolation area is over 8m from the site boundary, in excess of the 4m EPA requirement. The proposed system has been designed and will be

maintained to a very high degree. The Planning Authority requested further information and are satisfied that the proposal is acceptable.

- The precedent referred to by the appellants is not comparable. The proposed dwelling is for the applicant and her children who already visit the family home daily. There will be no increase in traffic.
- The Board is requested to grant permission.

6.3. **Planning Authority Response**

None on file.

7.0 **Assessment**

7.1.1. I have examined the file and the planning history, considered national and local policies and guidance, the submissions of all parties and inspected the site. I have assessed the proposed development and I am satisfied that the issues raised adequately identify the key potential impacts and I will address each in turn as follows:

- Principle of development
- Impact on Residential Amenity
- Treatment of wastewater
- Appropriate Assessment

7.2. **Principle of Development**

7.2.1. The subject site is located within the settlement boundary of Newcastle. The development plan seeks to consolidate residential development in the existing built-up area. The intensification of the existing plot to accommodate further residential development is an efficient and appropriate use of the subject lands. The applicant complies with the development plan requirement of having lived in the county for a minimum of three years. Should the Board decide to grant permission, it is recommended that an occupancy clause be attached.

7.2.2. I note that the appellants do not object to the principle of a dwelling on the subject lands – only the impact it has on their dwelling.

7.2.3. I note that the Board refused permission for a dwelling (301768) on Church Lane on the grounds that the lane was deficient in width and alignment and that sightlines were substandard. Following a request for further information, the applicant submitted a revised plan showing the closure of the entrance serving the existing family home and the creation of a new combined entrance with 45m sightlines in both directions. It is considered that the proposed combined entrance, with the closure of the existing entrance can serve both properties safely with no risk to traffic safety on Church Lane.

7.3. Impact on Residential amenity

7.3.1. I consider the landscaping proposals – namely to retain and reinforce the existing boundaries acceptable to prevent overlooking of the appellants property. Drawing no. P/04 shows the ridge height of the proposed dwelling at 0.3m higher than the appellants. The upper level of the proposed dwelling facing the appellants property (drawing no. P/05) shows one window and two roof lights facing the appellants boundary – at a distance of 12m from the boundary and 18m from the appellants dwelling. This is sufficient to avoid overlooking.

7.4. Treatment of Wastewater

7.4.1. The appellant requests that the Board direct the appellant to place their percolation area to the west of the proposed dwelling.

7.4.2. Following a request for further information, the applicant submitted drawing no. P/03 showing the location of treatment systems in the adjoining properties, a proposed percolation area in the north-east corner of the subject site and 2 no. soakway drainage systems, one to the east of the dwelling and one to the west.

7.4.3. The site is located in an area identified with a “Poor” vulnerability classification in the GSI Groundwater maps and is located within area defined “Poor” Aquifer category, representing a Groundwater Protection Response of R1 under the EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2009) (Annex B - Table B2).

7.4.4. The trial hole had a depth of 2.2 m, at which point the water table was encountered. The submitted report indicates that soil consists of a mix of loam, gravelly silt and gravelly clay loose stone with a mix of olive brown, reddish yellow and dark brown

coloured soil. The submitted site characterisation records a T-test value of 15.08 min/25mm indicating fast but consistent site drainage. A P-test was not undertaken. The submitted report indicates that three separate trial holes were provided. The report has found that the site is suitable for treatment by way of a packaged treatment system and a percolation area of 75sq.m. All required separation distances to houses, structures and other treatment systems are complied with.

7.4.5. I am satisfied that it has been demonstrated that the subject site is suitable for the disposal of wastewater, without injury to public health.

7.1. **Appropriate Assessment**

7.1.1. Having regard to the nature and scale of the proposed development in a partially serviced area, no appropriate assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on a European site.

8.0 **Recommendation**

8.1. I recommend that permission be GRANTED for the following reasons and considerations and subject to the following conditions:

9.0 **Reasons and Considerations**

9.1.1. Having regard to the nature, extent and design of the proposed development and the provisions of the Wicklow County Development Plan 2016 – 2022 and the Newcastle Settlement Plan 2016 - 2022, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the residential or visual amenities of the area and subject to the provision of a wastewater treatment system as proposed, the development will not will give rise to any public health concerns. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

10.0 **Conditions**

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, as amended by the further plans and particulars submitted on the 7 th of November 2019, except as may
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	<p>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.</p> <p>Reason: In the interest of clarity</p>
2.	<p>(a) The proposed dwelling, when completed, shall be first occupied as a place of permanent residence by the applicant, members of the applicant's immediate family or their heirs, and shall remain so occupied for a period of at least seven years thereafter unless consent is granted by the planning authority for its occupation by other persons who belong to the same category of housing need as the applicant. Prior to commencement of development, the applicant shall enter into a written agreement with the planning authority under section 47 of the Planning and Development Act, 2000 as amended, to this effect.</p> <p>(b) Within two months of the occupation of the proposed dwelling, the applicant shall submit to the planning authority a written statement of confirmation of the first occupation of the dwelling in accordance with paragraph (a) and the date of such occupation.</p> <p>This condition shall not affect the sale of the dwelling by a mortgagee in possession or the occupation of the dwelling by any person deriving title from such a sale.</p> <p>Reason: To ensure that the proposed house is used to meet the applicant's stated housing needs and that development in this rural area is appropriately restricted in the interest of the proper planning and sustainable development of the area.</p>
3.	<p>Water supply and drainage arrangements, including the 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 to ensure a proper standard of development</p>
4.	<p>Site development and building works shall be carried out only between the hours of 0800 to 1800 Mondays to Fridays inclusive, between 0800 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>
5.	<p>All service cables associated with the proposed development (such as electrical, communal television, telephone and public lighting cables) shall be run underground within the site. In this regard, ducting shall be provided to facilitate the provision of broadband infrastructure within the proposed development.</p> <p>Reason: In the interest of orderly development and the visual amenities of the area.</p>
6.	<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 noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and residential amenity.</p>
7.	<p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, and any statutory provision replacing or amending them, no development falling within Classes 1, 3 and 5 of Schedule 2, Part 1 to those Regulations shall take place within the curtilage of the house without a prior grant of planning permission.</p>

	<p>Reason: In the interest of orderly development, and to allow the planning authority to assess the impact of any such development on the amenities of the area through the statutory planning process</p>
8.	<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. The contribution shall be paid prior to the 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 the Board 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 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>

Gillian Kane
Senior Planning Inspector

16 March 2020