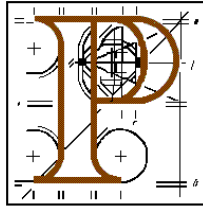


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL09.245546

Development: a) Replace existing Single Gated Entrance to a Double Gated Entrance

b) Remove Condition No. 2 of Parent Permission Reg Ref 04/3149

Planning Application

Planning Authority: Kildare County Council

Planning Authority Reg. Ref.: 15/585

Applicant: Adrienne Singleton

Planning Authority Decision: Refuse Permission

Planning Appeal

Appellant(s): Adrienne Singleton

Type of Appeal: 1st v Refusal

Observers: None

Date of Site Inspection: 22 December 2015

Inspector: Juliet Ryan

1.0 SITE LOCATION AND DESCRIPTION

- 1.1 The subject site, with a stated area of 1.9 ha is located in the rural townland of Tankardstown, County Kildare, some 7km west of Naas and 1km north of Newbridge. The site is located on the western side of Barrettstown Road, just northeast of Newbridge Golf Club.
- 1.2 The site houses a sizeable 1.5 storey detached dwelling, a detached garage, a stables building and a haybarn. The latter two structures are located at some distance from the house, in the southwestern corner of the site. The dwelling is located towards the front (east) of the site, addressing the road.
- 1.3 The site has frontage of some 70 metres onto the road, and is accessed from a centrally located splayed entrance at this point. The rear boundary of the site abuts the railway line (Dublin - Cork).
- 1.4 The entrance is defined by railings over a plastered wall, with the remaining boundaries delineated by timber fencing.
- 1.5 At the time of the site inspection the road on which the site was situated was subject to constant traffic movement in both directions. The wider area is rural in character, albeit subject to a noticeable degree of ribbon housing development.

2.0 PROPOSED DEVELOPMENT

- 2.1 The subject proposal comprises two elements – the removal of a condition attached to the parent permission; and revisions to the entrance. These may be summarised as follows:

2.1.1 Condition No. 2

The parent permission pertaining to the site relates to the construction of the dwelling - Reg Ref 04/3149 (further development post-dated this permission). Condition no. 2 of the parent permission required the dwelling to be first occupied for a period of at least five years as a permanent place of residence by Adrienne Singleton (the applicant). This condition has never been complied with, and the dwelling has never been occupied. The First Party now wishes for this condition to be removed, stating that her circumstances have changed which render compliance with this condition unfeasible.

2.1.2 Modified Entrance

It is proposed to replace the existing single gated entrance with a double gated entrance (contained within a widened single splay) to provide for one dedicated access to the stables and barn and one dedicated access to the house and garage.

3.0 PLANNING HISTORY

3.1 The Board is referred to the Planner's Report for a full outline of the planning history of the site, which may be summarised as follows:

3.1.1 Kildare County Council Reg Ref 04/3149 provided for the construction of the dwelling and garage and associated works. This was subject to a rural housing occupancy condition. It would also appear that it was subject to a sterilization condition.

3.1.2 Some three subsequent permissions were granted to the same applicant for further alterations / development on site comprising:

- 1) a stable block (3 stables) and associated works (Reg Ref 05/1679)
- 2) further development of the stables (8 stables) (Reg Ref 06/2574)
- 3) Retention of dwelling and stable block as constructed (Reg Ref 09/294)

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

4.1.1 The Transportation and Public Safety Department; Water Services; Area Engineer; and Irish Water had no objections subject to condition.

4.1.2 There were no Third Party submissions.

4.1.3 The Planner's Report considered the proposed removal of the occupancy condition to be unacceptable and contrary to the Development Plan's rural housing policy. The report also referenced failure to comply with a previous condition (non-submission of deed of covenant in respect of sterilising of land). The Planner's Report considered the second dedicated entrance unnecessary.

4.2 Planning Authority Decision

The Planning Authority decided to refuse permission for three reasons, which may be summarised as follows:

1. Deletion of occupancy condition would be contrary to rural housing policy and would materially contravene Development Plan policy in this regard
2. The development would conflict with the terms of the parent permission, which were never complied with, and would set an undesirable precedent
3. Alterations to the entrance would facilitate the subdivision of the site, which would be contrary to the terms of the parent permission. The development has not been constructed in accordance with plans and particulars as permitted, and therefore the proposal would represent further works to unauthorised development.

5.0 GROUNDS OF APPEAL

The First Party Appeal is a lengthy submission, which may be summarised as follows:

- Dwelling was completed in 2008 but has never been occupied
- Rural housing occupancy condition has not been complied with, and applicant no longer intends to live in dwelling
- Dwelling was originally intended for use by applicant, but due to personal circumstances and economic downturn occupancy was never commenced
- Given particular circumstances, occupancy condition is no longer viable or reasonable, and it is requested that it be removed
- Had applicant commenced occupancy upon completion (i.e. 2008) the 5 year conditioned period would now be over and she would be free to sell the property
- Applicant's honesty regarding non-occupancy is being used against her
- The purpose of the occupancy condition is to prevent speculative rural housing development. The subject dwelling was not speculative in nature and was always intended for the applicant, but circumstances have prevented her from taking up occupancy.
- The occupancy condition is now un-fit for purpose given that the applicant will not be residing in this location.

- There is a provision in the occupancy condition that allows Kildare County Council to consider approving the sale of the property.
- Reference is made to a precedent case whereby an occupancy condition was relaxed so that an applicant's brother could take up occupancy
- The proposal accords with the Planning Authority's rural housing policy
- Reason No. 2 for refusal is unreasonable by reference to S.40(1)(b)(ii) insofar as it is still capable of being complied with
- There is no benefit in forcing someone to reside in a dwelling that they do not intend living in
- Reason no. 3 for refusal is unreasonable given that it is no longer possible to comply with those conditions that were time-limited and have now expired
- The landscaping and sterilisation issues are minor in nature
- The entrance alterations are proposed for safety reasons and to avoid conflict between vehicular movements to/from the dwelling and to/from the stables and barn.
- The non-submission of the deed of covenant was an oversight
- The purpose of the occupancy condition has served its purpose given that significant time has passed since the completion of the dwelling, and having regard to the particular circumstances of this case, it would be reasonable to remove it.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 Planning Authority response

None received.

7.0 POLICY CONTEXT

7.1 The statutory plan is the Kildare County Development Plan 2011-2017.

- 7.1.1 Chapter 4 sets out the Plan’s rural housing policy, which seeks to manage the provision of single housing development in the countryside and restrict such development for those with demonstrable “local need” (cf S.4.13 and Policy RH4, excerpts appended), of which the subject site is located in Local Need Zone 1 (cf Table 4.3, appended). Permissions granted in accordance with the latter will have a 7 year occupancy condition (Policy RH8).
- 7.1.2 Policy RH5 (excerpt appended) requires that applicants for rural housing must comply with all other normal siting and design standards, including, *inter alia*, provision of safe vehicular access.
- 7.1.3 Policy RH7 (excerpt appended) prohibits residential development on a landholding where there is a history of speculative development regardless of local need criteria.
- 7.1.4 Policy RH9 provides for exceptions to the local need criteria in exceptional cases where an applicant is acting on foot of a court order.
- 7.2 The site is not located within a designated European Site, the nearest of which is Mouds Bog SAC c.1km west of the site (with the railway line in between).

8.0 ASSESSMENT

8.1 Appropriate Assessment

Having regard to the location of the subject site, to the nature and scale of the development proposed, and to the nature of the receiving environment, namely an already constructed residential site on a busy carriageway and delineated to the rear by a railway line; and having regard to the source-pathway-receptor model, no appropriate assessment issues arise.

8.2 Main Issues

Having inspected the site and assessed the details on file, and considered the strategic and statutory context, I consider the key issues to be addressed are:

- Removal of Condition No. 2 vis a vis Rural Housing Policy
- Need for New Entrance
- Miscellaneous Issues

[At the outset it is noted that the Planning Authority has been requested to provide details of previous applications on site since the parent permission. These have not been forthcoming. Notwithstanding this, and having regard to the substantive planning issues, I am satisfied that the absence of such details does not prevent an informed assessment of the subject appeal.]

8.3 Removal of Condition No. 2

- 8.3.1 The extant permission for the dwelling had a (then) standard 5 year occupancy condition attached. It appears that the subject dwelling was completed in 2008 and was never occupied due to the applicant's circumstances. The latter are not detailed in full except to the extent that the economic downturn - and employment requirements in particular - prevented the applicant from residing in the Tankardstown house. These circumstances prevail, and the applicant no longer intends to live in the dwelling, and requests removal of the occupancy condition so that the house may be occupied. In this regard, the applicant submits that the occupancy condition has effectively served its purpose given that significant time has passed since the completion of the dwelling, and having regard to the particular circumstances of this case, it would be reasonable to remove it.
- 8.3.2 Whilst the applicant's points are reasonably made, and certainly highlight the limits of such conditions, the removal of Condition no. 2 would be contrary to the Planning Authority's rural housing policy. In this regard I consider Reason No. 1 of the Planning Authority's decision to be reasonable, and have no information before me to support the material contravention of such policy.
- 8.3.3 I note that the First Party has alluded to a precedent case whereby an occupancy condition was relaxed to provide for transfer of a rural house to a brother of the applicant. Whilst noting that each case must be judged on its merits, I would comment that no such proposal has been made in the instant case (i.e. transfer to a qualifying family member) nor does it appear that the Applicant has sought to engage with the Planning Authority regarding difficulties in complying with the occupancy condition in the interim period since the completion of the dwelling.
- 8.3.4 The Board's attention is drawn to rural housing policy RH 9 of the Development Plan which provides for exceptions in cases where an applicant is acting on foot of a Court Order (requires documentary evidence). No such Court Order appears to pertain to the subject property.
- 8.3.5 The Board is also advised that the term of the occupancy condition has been extended since the granting of the parent permission for the subject

dwelling. Whilst this would not be retrospective, it is instructive to note that Policy RH8 now sets the occupancy term at seven years.

8.4 Entrance

- 8.4.1 The proposed alterations to the entrance would provide a separate dedicated access to the stables and barn. I can see no requirement for this given that the stables and barn are ancillary to the dwelling and were permitted as such. In forming this opinion I would note the considerable degree of vehicular movement in both directions witnessed on Barrettstown Road at the time of the site inspection and would caution against any intensification of use (or facilitation of same) that might generate increased traffic in this location, notwithstanding that there were no objections from the Planning Authority's Transportation Department.
- 8.4.2 Having regard to the above, and the ancillary status of the stables and barn, I do not see that any conflict in vehicular movements exists, and would recommend refusal of the proposed entrance alterations.

8.5 Other Issues

- 8.5.1 Aside from the occupancy condition, the Planning Authority has included issues of non-compliance with extant permissions in its reasons for refusal (landscaping and sterilisation agreement). The First Party submits that landscaping and sterilisation issues are minor in nature. I would not concur with the First Party, and would note that per Section 35(1) of PDA, 2000, the Planning Authority may refuse permission in instances of past failure to comply.
- 8.5.2 I do not consider that refusal for past failures to comply is within the remit of the Board. In any case, given the substantive planning issues in the instant case, and having regard to my conclusions above, this would not alter my overall assessment of the subject proposal.

9.0 CONCLUSIONS AND RECOMMENDATION

It is considered that the proposed development should be refused for the reasons and considerations hereunder.

REASONS AND CONSIDERATIONS

1. It is the policy of the Planning Authority that development outside of designated urban centres should be strictly limited to local need. This is set out in the current Development Plan for the area, where it is the settlement policy to direct new residential development to designated development centres and to protect existing rural settlements outside these centres from urban overspill. In accordance with this, Policy RH 8 of the Development Plan provides for an occupancy restriction for a period of seven years. The removal of Condition No. 2 (which restricted occupancy to the applicant for five years and has never been complied with), would conflict with the policies of the Development Plan, would set an undesirable precedent and would be contrary to the proper planning and sustainable development of the area.

2. The proposed alterations to the entrance are considered unnecessary given that the stables and barn are strictly ancillary to the dwelling, with which they currently share a vehicular entrance. It is considered that the proposed development would contribute to an excessive number of entrances on a heavily trafficked road and would facilitate the intensification of an ancillary use that would be contrary to the proper planning and sustainable development of the area.

Juliet Ryan
Senior Planning Inspector

4 January 2016