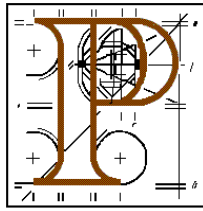


An Bord Pleanála



Inspector's Report

PL27.245591

DEVELOPMENT:- House, garage and all ancillary site works at Stilebawn, Kilmacanogue, Co. Wicklow.

PLANNING APPLICATION

Planning Authority: Wicklow County Council

Planning Authority Reg. No: 15/340

Applicant: Suzann Neilan

Application Type: Permission

Planning Authority Decision: Refuse

APPEAL

Appellant: Suzann Neilan

Type of Appeal: 1st-v-Refusal

DATE OF SITE INSPECTION: 12th January 2016

Inspector: Colin McBride

1. SITE DESCRIPTION

- 1.1 The appeal site, which has a stated area of 0.4 hectares is located west of Kilmacanogue, Co. Wicklow. The site is located in a rural upland area with the site located on the western side of the L-1033. The lands at this location fall in level westwards away from the public road, with the site located at a lower level than the public road and to the rear (west) of an existing dwelling (applicant's family home), which is the nearest dwelling to the site. The site is part of a field currently in grassland. The only established boundary of the site is the northern hedgerow boundary of the field. Adjoining lands are similar in use and character with a number of existing dwellings located to the east of the site along the public road.

2. PROPOSED DEVELOPMENT

- 2.1 Permission is sought for a new dwelling, garage, effluent disposal system and associated site works. The proposed dwelling is a single-storey dwelling with a floor area of 200 square metres and a ridge height of 3.815m. The dwelling features a shallow pitched roof with external finishes of smooth render and slates/tiles. The proposal provides for a garage with a floor area of 41 square metres and a ridge height 4.194m and external finishes similar to the dwelling. The proposal entails installation of a proprietary wastewater treatment system and connection to the public mains. It is proposed to provide a new vehicular entrance to the site.

3. LOCAL AND EXTERNAL AUTHORITY REPORTS

3.1

- (a) Irish Water (14/03/15): No objection.
- (b) Bray Engineer (No date): No objection subject to conditions.
- (c) Environmental Health Officer (15/05/15): No objection subject to conditions.
- (d) Planning report (25/05/15): The applicant was not considered to have demonstrated compliance with the criteria for Rural Housing under the County Development plan. The proposed development was considered to have an adverse visual impact in the surrounding areas. Refusal was recommended based on the three reasons outlined below.
- (e) Planning report (23/09/15): Further report in response to unsolicited further information. The report notes the further information, however still comes to the same conclusion as the previous planning reports. Refusal was recommended based on the reasons outlined below.

4. DECISION OF THE PLANNING AUTHORITY

4.1 Permission refused based on three reasons...

1. The site of the proposed development is located within an “Area Under Strong Urban Influence” as set out in the Sustainable Rural Housing Guidelines for Planning Authorities issue by the Department of the Environment, Heritage and Local Government in April 2005. The site is also located in an elevated and exposed open field in a Landscape Zone designated as a Mountain and Lakeshore of Outstanding Natural Beauty, a landscape category designated as a highly vulnerable in the Wicklow County Development Plan 2010-2016. The applicant has failed to demonstrate that they are a permanent native resident of this particular rural area and has not demonstrated a proven and economic need to reside at this location. It is therefore considered that the applicant does not come within the scope of the housing need criteria for a house at this location as set out in said Guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to:

- The elevation, exposure and location of the subject site in an Area of Outstanding Natural Beauty;
- The visibility of the subject site from Listed Prospects No.s 4 & 8 and from Powerscourt, a tourist asset of national importance;
- The wholly inappropriate dwelling design;
- The wholly inappropriate position of the proposed garage;
- The loss of the roadside boundary to facilitate the proposed entrance;
- The extensive excavation required to facilitate the proposed development;
- The extent of the driveway which would also open additional lands to development,

It is considered that the proposed development would form a highly incongruous feature in this highly scenic landscape designated an Area of Outstanding Natural Beauty would adversely impact on Listed Prospect No.s 4 & 8 and views from Powerscourt, which it is considered necessary to preserve, would lead to suburbanization of this relatively unspoilt rural area and would militate against the preservation and protection of the rural and visual amenities of the area, would erode the high quality landscape at this point and would be contrary to the provisions for the County Development Plan and to the proper planning and sustainable development.

3. Having regard to

- i) the inadequacy of the entire local road network serving the site, between the R755 to the south and the N11 to the northeast.
- ii) The number of existing dwellings served by this road network.

It is considered that the existing road network is only suitable to cater for traffic movements generated by existing/necessary dwellings, and to allow the development would endanger public safety by reason of traffic hazard.

5. PLANNING HISTORY

5.1 Ref no. 14/1571: Permission refused for a dwelling, wastewater treatment system and ancillary site works (withdrawn).

5.2 Ref no. 14/1572: Permission sought for a dwelling, garage, wastewater treatment system and ancillary site works on an adjoining site (withdrawn).

6. PLANNING POLICY

6.1 The relevant plan is the Wicklow County Development Plan 2013-2019.

Rural Housing Policy is set down under Chapter 6

Chapter 17 Natural Environment

Landscape hierarchy: Glencree/Glencullen Area of Outstanding Natural Beauty: Vulnerability: Very High.

The site location is within a rural area in which the landscape character is that of an Area of Special Amenity and which is outside settlements. It is an area in which the criteria of Policy Objective RH 14 relating to applications for residential development in rural areas would apply.

Design standards for residential development in the open countryside are set out in section 6.4.3.

There is a specific objective for protection of views and prospects from identified vantage points in which prevention of obtrusive or incongruous features is required.

6.2 Under the publication 'Sustainable Rural Housing: Guidelines for Planning Authorities', the site is located in an 'Area under strong Urban Influence'.

7. GROUNDS OF APPEAL

7.1 A third party appeal has been lodged Vincent JP Farry & Co Ltd on behalf of Suzann Neilan,. The grounds of appeal are as follows...

- The appellant notes that they comply with Rural Housing policy in that the applicant's parents purchased their dwelling at this location in 1980 and the applicant was raised here. The appellant has provided a number of pieces of evidence demonstrating her parent's longstanding occupation of the existing dwelling and note that they are permanent native residents based on the definition under Development Plan policy (10 years or more). It is noted that the applicant has a social need to reside here due to need to care for her ill mother who resides in the existing family home. The appellant notes that she is not automatically disentitled from constructing a dwelling on the basis of owning an existing dwelling and a number of cases are cited. It is considered that the applicant does comply with the policy RH14.
- It is noted that the visual impact of the proposed dwelling is satisfactory based on its siting and modest scale and would have a satisfactory visual impact in the surrounding area and would not have a detrimental visual impact when viewed from Powerscourt House and the Views and Prospects (no. 4 and no. 8) identify in the refusal reason. The appellant has submitted photos to demonstrate the lack of visibility of the site from Powerscourt and the visual impact in the surrounding area.
- It is noted that the loss of vegetation on the roadside boundary would not be a significant amount and would be minimal to provide for the vehicular access.
- The design of the dwelling has been revised form previous proposal sought (ref no. 14/1571) and is a modest low profile design to take into account visual impact.
- In regards to excavation the applicant is willing to accept a condition providing for the construction of the dwelling closer to existing land levels. It is noted that the driveway would not have significant visual impact and will be hardstanding/gravel and be screened by the roadside boundary.
- The appellant acknowledges that the layout of the junction of the L-1033 ad regional Route R755 is not ideal, but notes that majority of traffic using the road use the northern approach rather than use the junction to the site. It is noted that visibility at the vehicular entrance point is satisfactory and the level of traffic generated by the proposed development would not be excessive with it noted that the road network here could accommodate the additional traffic.

8. RESPONSES

8.1 No responses.

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/Development Plan policy/Rural Housing
Design/scale/visual impact/landscape character
Traffic/access
Wastewater Treatment
Other issues

9.2 **Principle of the proposed development/development plan policy/rural housing:**

- 9.2.1 The appeal site is located in a rural area of Co. Wicklow. Chapter 6 of the Plan sets out Rural Housing Policy. Under Objective RH14 it is noted that “residential development will be consisted in the countryside only when it is for the provision of a necessary dwelling’ in a number of circumstances (attached). In the case of the applicant she is seeking to construct a dwelling on land owned by her parents and adjacent to her parents’ home. The applicant current resides in Limerick and is in ownership of a dwelling there. The applicant’s parents acquired the existing dwelling in 1980 and have resided there since and the applicant was raised at this location. The applicant wishes to construct a new dwelling adjacent her family home in order to care for her ill mother who resides at this location. Permission was refused on the basis “it is considered that the applicant has failed to demonstrate that they are a permanent native resident of this particular rural area and has not demonstrated a proven and economic need to reside at this location. It is therefore considered that the applicant does not come within the scope of the housing need criteria for a house at this location as set out in said Guidelines” (Sustainable Rural Housing).

- 9.2.3 The Council as indicated that the applicant does not meet the criteria set down under Development Plan policy for Rural Housing under RH14. I would take a different position on this and would consider that the applicant does meet a number of criteria as they are written. In particular no. 2 of Objective TH14, this states that ...

2. A son or daughter, or niece/nephew considered to merit the same position as a son/daughter within the law (i.e. when the uncle/aunt has no children of his/her own), of a permanent native resident of a rural area, whose place of employment is outside of the immediate environs of the local rural area to which the application relates and who can demonstrate a definable

social or economic need to live in the area to which the proposal relates and not as speculation.

In this case the applicant is a daughter of permanent native residents (they have lived at this location for 10 years of more) and the applicant was raised at this location. The applicant is returning home to reside beside her parents and wishes to take care of her ill mother. I would consider that such is definable social need. Although the applicant appears to have a dwelling, such is a considerable distance from the site (Limerick) and should not be used to preclude the applicants from seeking to relocate to the area. I would consider that based on the criteria as they are written and in particular no. 2 that the applicant would comply with Rural Housing Policy as written.

9.2.4 The refusal reason suggest that the applicant does not come within the scope of the housing need criteria for a house at this location as set out in the Sustainable Rural Housing Guidelines. As noted above the site is located with an 'Area Under Strong urban Influence' as identified on Map 1 (Indicative Outline of NSS Rural Area Types). I do not consider that the proposal would be contrary such Guidelines in that there is clearly stated Development Plan policy requiring demonstration of housing need with a number of set criteria to demonstrate such. I would consider that the applicant complies with one of the categories set out to demonstrate rural housing need and would note that such is consistent with the illustrative suggestions of criteria and scenarios that should be applied to determine rural housing need set out under the Guidelines.

9.2.5 There is an indication on the file that there is an issue concerning other development proposed on the landholding and a previous withdrawn application by the applicant/appellants mother on an adjacent site (Ann Gordon) outlined in the planning history. I would note that this application was withdrawn and notwithstanding such, the current appeal is being assessed on its merits with the applicant named being assessed under the criteria for Rural Housing in the Development Plan. In this case I would consider that the applicant/appellant is compliant with Rural Housing policy and should be given favourable consideration subject to the physical impact of the proposal being acceptable.

9.3 Design/scale/visual impact/landscape character:

9.3.1 The visual impact of the proposal was also a key consideration in the decision to refuse permission. The site is located in an upland area identified as being in an Area of Outstanding Natural Beauty: Vulnerability Very High. The refusal reason notes that the proposal would have an adverse impact when viewed from Powerscourt House and Views and Prospects No.s 4 and 8 identified under the Development Plan.

- 9.3.2 The proposal is for a single-storey dwelling on a site located at a significantly lower level than the public road due to the topography of the site which falls in a westerly direction away from the road. The dwelling is located to the west of the existing dwelling and is well away from the road. It is proposed to open a new access north of the existing dwelling that will sweep down to the site. The dwelling itself is a low profile dwelling with a ridge height of 3.8m. In terms of overall visual impact the dwelling is unlikely to be significantly visible from the public road due to its low level, its modest height and scale, and not being located immediately adjacent the public road. The impact of the proposal from Powerscourt House and views and prospects in the area is noted in the reason for refusal. As noted earlier the land at this location falls away from the public road in a westerly direction with Powerscourt located to the west and visible from the site. Given Powerscourt is a significant land mark and visitor attraction including its grounds, the visual impact of the proposal is a relevant consideration. When viewed from the west the proposed development is unlikely to have a significant visual impact due to the modest scale of the dwelling and the distance of Powerscourt from the site. I would consider that the existing landscape and vegetation taken in conjunction with the modest scale of the dwelling would mean that such would have a significant backdrop and not appear as prominent feature in the landscape at this location.
- 9.3. In regards to views and prospects the refusal reason notes that the proposed development would be visible and have a detrimental impact from nos 4 and 8. I would consider that the same applies in that the proximity of the site and modest scale of the dwelling would not have a significant or adverse visual impact from any view or prospect let alone the ones identified in the reason for refusal. The assessment of the proposal raises questions regarding the inappropriate design and the visual impact of the driveway access. In regards to the design I would note that the dwelling lacks any real architectural merit and is a fairly generic type design. Notwithstanding such, I do not consider that the design would render the development unacceptable on account of its low profile nature and that fact that it would not have a significant or adverse visual impact. I would consider that the low profile design although lacking in any real architectural character is an attempt to deal with the Planning Authority's concerns at this location. In regards to the driveway, such sweeps down from the level of the public road to the main body of the site. I would consider that such would be acceptable in regards to visual impact subject to some form of landscaping and I would note that it is proposed as part of the proposal.

9.4 Traffic/access:

9.4.1 The site is located off an existing local road (L-1033), which is minor country road with a width of approximately 4m. This road runs north south and has a junction with the R755 Regional Route over 1k to the south of the site. In terms of traffic impact the proposal is for a new vehicular entrance from the L-1033. The road itself is not heavily trafficked and the sightlines available at the proposed vehicular entrance are of a reasonable standard. The reason for refusal seems to relate to the quality of the junction with the R755 over 1km to south of the site and the capacity of the road on the basis of the necessity of the dwelling under Rural Housing policy. I would first note that I consider that the applicant meets rural housing policy as outlined in an earlier section of this report. In regards to traffic impact I am satisfied that one additional dwelling at this location would not be unacceptable in the context of traffic safety and the sightlines at the vehicular access are of an acceptable standard. In regards to the junction between the L-1033 and R755, I would note that the layout of this junction is not ideal with the local road joining the regional route at a very acute angle. Notwithstanding such the layout of this junction is not within the control of the applicant and do not consider that it a reason to preclude permission for the dwelling. The existing junction is in full use by existing dwellings and users of the public road and I do not consider that the less than ideal layout of such is a reason to preclude permission for the proposed dwelling.

9.5 Wastewater Treatment:

9.5.1 The proposal entails installation of a proprietary wastewater treatment system. Site characterisation was carried out including trial hole and percolation test. The trail hole test indicate that the water table is 1.2m below the ground level. The percolation tests results for P and T tests carried out by the standard method indicate percolation values that are within the standards that would be considered acceptable for operation of a wastewater treatment system set down under the EPA Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses. I would consider that on the balance of information it is considered that the applicant has demonstrated adequately that the proposed wastewater treatment would be acceptable and would not compromise public health. As such I would consider that the drainage proposals would be acceptable.

9.5. Other Issues:

9.5.1 Having regard to the nature and scale of the proposed development and its proximity to the nearest European site, no Appropriate Assessment issues arise and it is not considered that the proposed development would be unlikely to have a significant effect individually or in combination with other plans or projects on a European site.

RECOMMENDATION

I recommend a grant of permission subject to the following conditions.

REASONS AND CONSIDERATIONS

Having regard to the scale and design of the proposed development and the policies of the development plan and the Sustainable Rural Housing Guidelines for Planning Authorities, 2005, it is considered that subject to compliance with conditions set out below, the proposed development would not seriously injure the amenities of the area, or of property in the vicinity, would be acceptable in terms of traffic safety and would be in accordance with 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 on the 07th day of April 2015 and as amended by the plans submitted on the 08th day of July 2015, except as may otherwise be required in order to comply with the following conditions. Where such conditions require points of detail to be agreed with the planning authority, these matters shall be the subject of written agreement and shall be implemented in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The entire premises shall be used as a single dwelling unit only.

Reason: To prevent unauthorised development.

3. Prior to the commencement of development, details of the materials, colours and textures of all the external finishes shall be submitted to the planning authority for agreement.

Reason: In the interest of orderly development and the visual amenities of the area.

4. The proposed vehicular entrance and proposed access road shall be designed and constructed in accordance with the requirements of the planning authority. Details shall be agreed with the planning authority prior to the commencement of development.

Reason: In the interests of traffic safety.

5. 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.

Reason: In the interest of orderly development and the visual amenities of the area.

6. 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.

Reason: In the interest of public health and to ensure a proper standard of development.

7.

(a) The proposed effluent treatment and disposal system shall be located, constructed and maintained in accordance with the details submitted to the planning authority [on the 07th day of April, 2015, and in accordance with the requirements of the document "Wastewater Treatment Manual: Treatment Systems for Single Houses", Environmental Protection Agency (current edition). Arrangements in relation to the ongoing maintenance of the system shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

(b) Within three months of the first occupation of the dwelling, the developer shall submit a report from a suitably qualified person with professional indemnity insurance certifying that the proprietary effluent treatment system has been installed and commissioned in accordance with the approved details and is working in a satisfactory manner in accordance with the standards set out in the EPA document.

Reason: In the interest of public health.

8. Surface water from the site shall not be permitted to drain onto the adjoining public road.

Reason: In the interest of traffic safety.

9. The site shall be landscaped in accordance with a scheme of landscaping with indigenous trees to boundaries, details of which shall be submitted to the planning authority for agreement before development commences. The scheme shall include a timescale for its implementation.

Reason: In the interest of visual amenity.

10. 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 the commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.

Reason: In the interest of amenities and public safety.

11. That all necessary measures be taken by the contractor to prevent spillage or deposit of clay, rubble or other debris on adjoining roads during the course of the works.

Reason: To protect the amenities of the area.

12. 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.

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.

Colin McBride
18th January 2016