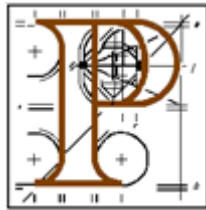


An Bord Pleanála



Inspector's Report

Appeal Reference No: PL27.245762

Development: Single storey dwelling, new road access and waste water treatment plant.

Location: Church Lane, Newcastle, Co. Wicklow

Planning Application

Planning Authority: Wicklow County Council

Planning Authority Reg. Ref.: 15/437

Applicant: David McMahon

Planning Authority Decision: Grant permission

Planning Appeal

Appellant: Rachel Lippiatt

Type of Appeal: Third party

Date of Site Inspection: 11/2/2016

Inspector: Siobhan Carroll

1.0 SITE LOCATION AND DESCRIPTION

1.0.1 The appeal site is located at Church Lane, Newcastle, Co. Wicklow. It is situated circa 500m to the south of the junction between Church Lane and the L5051 on the western side of Newcastle. Immediately to the north of the site there is a detached cottage adjacent to the roadside. The adjoining lands to the south contains a two-storey Georgian style farmhouse and a number of outbuildings.

1.0.2 The site has a stated area of 0.343 hectares. It is grassed and features a post and wire fence boundary. The site extends 86m to the west and has frontage of circa 35m. There is a grassed embankment along the roadside boundary and the level of the site is approximately 2.5m above the level of the road.

2.0 PROPOSED DEVELOPMENT

Permission is sought for a single storey dwelling, new road access and waste water treatment plant. Features of scheme include;

- Site area – 0.343 hectares,
- Floor area – 154sq m
- Ridge height 5.5m

3.0 PLANNING HISTORY

There is an extensive planning history on site and a number of applications were withdrawn. The following relates to applications on site where a decision was issued.

Reg. Ref. 12/6664 – Permission was refused for a dwelling on site. Permission was refused on the basis that there were inadequate sightlines provided at the proposed vehicular entrance and that the road serving the site was inadequate in terms of width, alignment and structural condition.

Reg. Ref. 11/4904 – Permission was refused for a dwelling on site. Permission was refused for two reasons. The first refers to traffic safety and the second refers to the inadequate evidence provided to indicate that the site is suitable for the on-site treatment of effluent.

4.0 PLANNING AUTHORITY DECISION

4.1 Planning and technical reports

Internal Reports:

Environmental Health Officer: No objections subject to conditions

Submissions

The Planning Authority received one submission in relation to the planning application. The main issue raised are similar to those set out in the appeal.

4.2 Planning Authority Decision

The Planning Authority granted permission subject to 13 no. conditions.

5.0 GROUNDS OF APPEAL

A third party appeal was submitted by Auveen Byrne Associates on behalf of Rachel Lippiatt on the 16th of November 2015. The content of the appeal submission can be summarised as follows;

- The appellant's property is situated to the south of the appeal site. It is the Georgian style dwelling 'The Lodge'.
- The extensive planning history relating to the appeal site is discussed in the appeal submission including where applications were made and withdrawn.
- It is noted that permission for single dwellings on the site was refused or recommended for refusal on the basis that inadequate sightlines were available at the entrance and that the condition of Church Lane was inadequate in terms of width, alignment and structural condition.
- The sequence of correspondences relating to the application are set out in detail in the appeal.
- It is contended that it has not been demonstrated that adequate sightlines can be achieved at the proposed entrance. It is stated that the required 70m sightline to the north would be over the adjoining cottage property. The cottage is not in the ownership of the site owner Mr Eager or the applicant Mr McMahan, therefore the sightlines cannot be maintained without the agreement of the neighbouring landowner. The sightline to the south is also

restricted by the presence of the stone wall to the front of the appellant's property.

- It is highlighted that the appellant agrees with the opinion of the Planning Officer that traffic generation is determined by the scale and nature of the development and not by the applicant's particular circumstances.
- It is also contended that the having regard to the condition and alignment of Church Lane that it not capable of accommodating additional traffic movements. The Planning Authority considered that granting of permission would not result in a precedent for further development on Church Lane. The applicant is currently residing at Church Lane however the appellant states that the Council cannot ensure that the dwelling built on foot of the permission will remain occupied by a native resident of Church Lane.
- The appellant requests that the Board have regard to the particular narrow width of Church Lane, its horizontal and vertical alignment in the immediate vicinity of the site, the poor condition of the road surface and the lack of adequate sightlines and refuse permission on that basis.
- The appellant also notes the scale of the proposed dwelling, the elevated position of the site relative to the road and the removal of screening which would result in the proposed development becoming an obtrusive feature in the landscape.

6.0 RESPONSES/OBSERVATIONS TO GROUNDS OF APPEAL

6.1 First Party response

A response to the third party appeal was received by the Board from Frank Ó'Gallachóir Associates Ltd. on behalf of the applicant David McMahon on the 14th of December 2015. The main issues raised concern the following;

- It is accepted that there have been a number of previous planning applications which were refused permission on the site. These refusals related to applicants who were not from the Church Lane area but elsewhere in rural Wicklow.
- In relation to the issue of additional traffic on Church Lane it is noted that under Reg. Ref. 09/675 permission was granted for a dwelling circa 800m to the south of the appeal site. The laneway in the vicinity of the site was not surfaced and remains unsurfaced. The Planning Authority considered that sightlines of 50m were acceptable in the case of that application. It is stated

that these considerations should apply in the case of the proposed development.

- Under Reg. Ref. 08/1647 permission was granted for 4 no. holiday homes to the north of the appeal site. The site was located outside the development boundary of Newcastle and accessed by the same road network as the appeal site. While it is noted that permission has now lapsed it would have generated additional traffic movements. In contrast the applicant Mr McMahon is a native resident of Church Lane.
- Regarding the matter of sightlines it is stated that the unsolicited further information dated the 10th of September 2015 addresses the issue in detail. Drawing DMCM/08 indicates a sightline of 75m to the north. The sightline to the south is not relevant as the Planning Authority did not have concerns in relation to this.
- Works have taken place on the roadside grass embankment to move it back to improve sightlines.
- The applicant Mr McMahon is employed as an agricultural labourer and lives with his partner and children in his mother's cottage. He is a permanent native resident of Church Lane Newcastle his family home is located 700m to the south of the appeal site. He has lived at Church Lane since birth and he is willing to sign a section 47 occupancy agreement.
- There is existing tree screening to the north and south therefore the proposed dwelling would not be visually obtrusive. The new roadside boundary comprising a beech and whitetorn hedge is well established and will screen the site from close range views.
- It is requested that the Board grant permission for the proposed development.

6.2 Planning Authority response

- None received

7.0 POLICY CONTEXT

7.1 Development Plan

Wicklow County Development Plan 2010 - 2016

- The appeal site is within a rural area outside settlement development boundary of Newcastle.

- Section 6.3.2 sets out the Development Plan criteria for new houses in the open countryside. It is recognised that residential development is needed to house those who are indigenous to and/ or have a bona fide necessity to live in the rural area.
- Objective RH14 lists the circumstances where residential development will be considered in the countryside.
- The site and surrounding area has a 'Access Corridor Area' landscape designation.

7.2 National Policy

The Sustainable Rural Housing Guidelines for Planning Authorities, April 2005

The above Ministerial guidelines refer to criteria for managing rural housing requirements whilst achieving sustainable development. The subject site is located within an Area Under Strong Urban Influence as identified in Map 1: Indicative Outline of NSS Rural Area Types in the DOE Rural Housing Guidelines. The key development plan objectives in these areas should be to on the one hand to facilitate the housing requirements of the rural community as identified by the planning authority in the light of local conditions while on the other hand directing urban generated development to areas zoned for new housing development in cities, towns and villages in the area of the development plan.

EPA's Code of Practice: Wastewater Treatment and Disposal Systems Serving Single Houses

This policy document provides guidance on the assessment of on-site wastewater disposal systems for single house. The government considers that the implementation of the Code is a key element to ensure that the planning system is positioned to address the issue of protecting water quality in assessing development proposals for new housing in rural areas and meeting its obligations under Council Directive (75/442/EEC).

8.0 ASSESSMENT

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

- Rural Housing Policy
- Design and Visual amenity
- Site Access
- Effluent treatment
- Appropriate Assessment

8.1 Rural Housing Policy

8.1.1 With regard to compliance with rural housing policy the proposal should be in accordance with the provisions of the Sustainable Rural Housing Guidelines and the provisions of the Wicklow County Development Plan 2010 – 2016, as it relates to settlement in rural areas. The appeal site is located in an area identified as an Area Under Strong Urban Influence on Map No.1 – Indicative Outline of NSS Rural Area Types in the Sustainable Rural Housing Guidelines.

8.1.2 Objective RH14 of the Wicklow County Development Plan 2010 – 2016 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.'

8.1.3 The applicant Mr David McMahon is employed as an agricultural labourer and is the potential purchaser of the site. Mr McMahon's family home is located on Church Lane circa 700m to the south of the appeal site. It is stated in the documents submitted with the application that David McMahon is a native resident of Church Lane, Newcastle and that he has resided at his family home there for the past 40 years. The applicant has submitted, a letter from Kilcoole Primary School which states that he attended the school from September 1980 to June 1987. A copy of the applicants birth certificate was also submitted which states that his parents address at the time of his birth was Church Road, Newcastle.

8.1.4 On this basis of the information on file, the applicant meets the qualification criteria to build a rural dwelling at this location in accordance with the provisions of the Development Plan and the provisions contained in the Rural Housing Guidelines.

8.2 Design and Visual Amenity

- 8.2.1 The site is located within an area designated an 'Access Corridor Area' in the Wicklow County Development Plan, 2010-2016. These landscape areas are described as under medium vulnerability. The site is located on the western side of Church Lane it comprises a field situated between a site of a roadside cottage and the landholding to the south containing a farmhouse and outbuildings.
- 8.2.2 Section 6.4.3 of the Development Plan refers to Houses in the open Countryside and advises in relation to the siting of dwellings that buildings should be nestled into the landscape and not be located in an elevated position on a site. It is also recommended that proposed buildings avoid open field or exposed locations that prevent the development being integrated within its surroundings.
- 8.2.3 The proposed dwelling has a floor area of 154sq m. The house design is single storey with a proposed ridge height of 5.5m. It is proposed to locate the dwelling a minimum distance of 32m from the public road to the east. The dwelling would be located a minimum distance of 48m from the closest residential property to the north.
- 8.2.4 There is a grassed embankment along the roadside boundary and the level of the site is circa 2.5m above the level of the public road. The proposed finished floor level of the dwelling is indicated on the site layout plan as 40. There is mature tree planting along the southern site boundary and also along a section of the northern boundary. A hedgerow has been planted along the roadside boundary circa 1m from the edge of the embankment. Having regard to the height and design of the proposed dwelling and the existing screen planting, I consider that the proposed dwelling can be successfully integrated within the landscape setting. Accordingly, I would consider that this development can be positively absorbed without any negative impacts on the visual setting and the rural amenities of the surrounding area.

8.3 Site Access

- 8.3.1 It is proposed to develop a new site entrance onto Church Lane. Church Lane is accessed off the L5051 on the western side of Newcastle. The subject site is situated 500m to the south of the junction between the two roads. Church Lane has a road width of circa 5m and it serves approximately twenty five existing dwellings in the vicinity of the site.
- 8.3.2 Works were undertaken on the roadside boundary of the site which involved the removal of trees and hedgerow. These works have served to improve visibility particularly to the north. It is indicated on the Drawing No. DMCM/04 that sightlines of 75m can be provided to the north and south. The unsolicited further information submitted by the applicant to the Planning Authority on the 10th of September 2015 includes drawing DMCM/08 which indicates the 75m

sightline to the north at 10m intervals. The proposed development, an individual dwelling would not involve the generation of involve substantial volumes of additional traffic. Having inspected the site and viewed the location of the proposed entrance and given the relative low volume of traffic using the public road and the low travelled speed, I am satisfied that an adequate sightline distance is available in both directions.

- 8.3.3 The Planning Authority considered the proposed development acceptable in terms of access and traffic considerations subject to the provision of a condition restricting the occupancy of the property by the applicant or other persons who are permanent native residents of Church Lane and who comply with the provisions of Objective RH14 of the Wicklow County Development Plan 2010-2016. Regarding this matter I consider that it is appropriate to require the applicant to enter into a Section 47 agreement for a period of seven years and that it is sufficient to the restrict the occupancy of the property within the seven year period to other persons who are deemed by the Planning Authority to comply with Objective RH14 of the Development Plan.

8.4 Effluent treatment

- 8.4.1 It is proposed to install a packaged wastewater treatment system and polishing filter. It is proposed to locate the treatment plant circa 20m to the west of the dwelling and the percolation area is located on the layout plan 24m to the west of the dwelling. Regarding water supply it is proposed to bore a well in the north-eastern corner of the site and uphill of the effluent treatment system. Table 6.1 of the EPA Manual – Treatment Systems for Single Houses sets out the minimum separation distances, the minimum distance from a watercourse or stream to a percolation area is stated as 10m and the minimum distance from a road to the a percolation area is stated as 4m. There is a watercourse circa 280m to the north of the site.
- 8.4.2 The site suitability assessment indicates that a T value of 12.97 was recorded on site. A T value of greater than or equal to 3 and less than or equal to 50, means that the site is suitable for the development of a septic tank system or a secondary treatment system discharging to groundwater. It is proposed to discharge the treated effluent to ground water. No water table or rock was encountered up to a depth of 2m below ground level during the site testing. The groundwater protection response for the area is R2¹ which means the site is suitable for an on-site system subject to normal good practice.
- 8.4.3 The Environmental Health Officer in their report dated the 29th of May 2015 had no objections to the proposed on-site effluent treatment system subject to its installation in accordance with the specifications of the EPA Manual. Having regard to the information submitted including the site characterisation report and the proposal to install a secondary treatment system, I would concur with the assessment of the planning authority that site is suitable for the proposed on site effluent treatment system subject to the system being constructed and maintained in accordance with the details submitted.

8.5 Appropriate Assessment

- 8.5.1 The appeal site is approximately 1.9km from the Murrough Wetlands SAC (Site code 002249) and the Murrough SPA (Site code 004186). The Murrough is a coastal wetland complex which stretches for 15 km from Ballygannon to north of Wicklow town, and it extends inland for up to 1 km. The site is selected as an SAC for the presence of annual vegetation of drift lines, perennial vegetation of stony banks, atlantic salt meadows, mediterranean salt meadows and alkaline fens which are habitats and/or species listed on Annex I / II of the E.U. Habitats Directive. Cladium Fens is a priority habitat on Annex I of the E.U. Habitats Directive.
- 8.5.2 The Murrough is a Special Protection Area (SPA) under the E.U. Birds Directive, of special conservation interest for the following species: Red-throated Diver, Greylag Goose, Light-bellied Brent Goose, Wigeon, Teal, Black-headed Gull, Herring Gull and Little Tern.
- 8.5.3 Having regard to the nature and scale of the development and to the absence of direct connection between the subject site and the European Sites and to their conservation objectives I am satisfied that 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, together with all other issues arising, I recommended that permission be granted for the following reasons and considerations subject to the conditions set out below.

REASONS AND CONSIDERATIONS

It is considered that the applicant comes within the criteria set out under Objective RH14 of the Wicklow County Development Plan 2010-2016 in relation to eligibility for development of a house in the countryside and that the proposed development, subject to compliance with the conditions set out below, would assimilate into the landscape and not interfere with protected views and prospects, would be acceptable in terms of traffic safety and convenience, would not be prejudicial to public health and would, therefore, be in accordance with the proper planning and sustainable development in the area.

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 10th day of September, 2015, 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 out in accordance with the agreed particulars.

Reason: In the interest of clarity.

2.
 - (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 to this effect.
 - (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.

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.

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 [to meeting essential local need] in the interest of the proper planning and sustainable development of the area.

3. The roof colour of the proposed house shall be blue-black or dark-grey slate. The external walls shall be in a cement render with napp plaster or painted finish in a white or off white colour range. No fenestration other than the roof

lights shown in the plans lodged with the application shall be provided above eaves height in the roof slopes.

Reason: In the interest of the visual amenities of the area.

4. On completion of the laying of the floor slab, a certificate shall be issued by a suitably qualified professional (with indemnity insurance) to confirm that the finished floor level for the development is in accordance with the details shown on site layout plan, (drawing number DMcM/04) submitted to the planning authority on the 30th day of April, 2015.

Reason: In the interest of clarity and visual amenity.

5. The entrance gates to the proposed house shall be set back not less than 5 metres from the road. The recessed entrance shall be splayed with wing walls, timber fences or stone banks to be splayed at the maximum angle achievable. These walls, fences or banks shall not exceed 0.8 metre in height.

Reason: In the interest of traffic safety.

6. A proprietary effluent treatment and disposal system shall be provided. This shall be designed, constructed and maintained in accordance with the requirements of the document entitled "Wastewater Treatment Manual – Treatment Systems for Single Houses" – published by the Environmental Protection Agency. Details of the system to be used, and arrangements in relation to the ongoing maintenance of the system which shall include a contract shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. The contract shall include provision for guarantee of continuous effective treatment of the effluent and periodic de-sludging and immediate rectification of malfunctions.

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.

Reason: In the interest of public health and the amenities of properties in the area.

7. All public service cables for the development, including electrical and telecommunications cables, shall be located underground throughout the site.

Reason: In the interest of visual amenity.

8. Drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority. All surface water generated within the site boundaries shall be collected and disposed of within the curtilage of the site. No surface water from roofs, paved areas or otherwise shall discharge onto the public road or adjoining properties.

Reason: To ensure adequate servicing of the development, and to prevent pollution.

9. The site shall be landscaped in accordance with a scheme, details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This scheme shall include the planting of trees of indigenous and evergreen species (mountain ash, silver birch, cedar willow, sycamore, larch spruce, pine and Lawson's cypress) along the eastern and southern boundaries of the site. Any plants which die, are removed or become seriously damaged or diseased shall be replaced within the next planting season with others of similar size and species, unless otherwise agreed in writing with the planning authority.

Reason: In order to screen the development and assimilate it into the surrounding rural landscape, in the interest of visual amenity.

10. 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, as amended. 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 An Bord Pleanála 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.

11. Prior to commencement of development, the developer shall lodge with the planning authority a security in the sum of €2,000 (one thousand euro) to secure the provision and satisfactory completion of the development and compliance with the conditions attached hereto, coupled with an agreement empowering the local authority to apply such security or part thereof to the satisfactory completion of any part of the development.

Reason: To ensure the satisfactory completion of the development.

**Siobhan Carroll,
Inspectorate
10th of March 2016**